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A.L.R. Index, Municipal Corporations
A.L.R. Index, Public Utilities
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

a. In General

§ 1507. Validity of classifications for purposes of taxation, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3572

Although the constitutional guaranty of equal protection applies to the exercise by the state of its power of taxation, it does not prohibit reasonable classifications for purposes of taxation as long as the classification rests on a difference having a reasonable relation to the subject of the particular legislation so that all persons similarly circumstanced shall be treated alike.

Although the constitutional guaranty of equal protection applies to the exercise by the State of its power of taxation,[1] it does not require absolute equality or uniformity.[2] Although the Equal Protection Clause applies only to taxation which in fact bears unequally on persons or property of the same class,[3] it protects only against taxation which is palpably arbitrary or grossly unequal in its application to persons concerned[4] or which jeopardizes the exercise of a fundamental right or differentiates on the basis of an inherently suspect characteristic.[5]

The Equal Protection Clause does not prohibit tax inequality which results from mere mistake or error in judgment.[6] In order to be unconstitutional, a classification for tax purposes must be manifestly arbitrary and unreasonable and not possibly so.[7] Since taxation is so largely a question of policy, the legislature possesses the largest measure of discretion in these matters,[8] and a classification arising in connection with a tax statute will be tested under the standard of rationality commonly applied to economic matters.[9] Thus, a legislative classification is not violative of equal protection so long as any state of facts can be reasonably conceived that would sustain a tax statute,[10] and the statute will be sustained if the state legislature reasonably could have concluded that the challenged classification would promote a legitimate state purpose.[11] In the context of tax legislation, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is hostile and oppressive discrimination against particular persons or classes, and the burden is on the one attacking a legislative arrangement to negate every conceivable basis which might support it.[12]

The question of equal protection must be decided with respect to the general classification rather than by the chance incidents of the tax in particular instances or with respect to particular taxpayers,[13] and the decision should be based on the practical operation of the statute.[14] The expense and difficulties of administration should be considered in determining whether a classification is valid;[15] ordinarily, under equal protection analysis, administrative considerations can justify a tax-related distinction.[16]

The states may make any reasonable classification of persons,[17] businesses,[18] occupations or callings,[19] or property,[20] and may tax certain classes of property to the exclusion of other classes,[21] and, for different classes of persons or property, may prescribe different methods of assessment,[22] valuation,[23] or equalization;[24] different rates of taxation;[25] different remedies for excessive assessments;[26] and different means of enforcing the collection of taxes.[27] Different types of taxpayers may be taxed differently even though they compete[28] or even though the difference between the subjects taxed is not great.[29]

A tax statute is void, however, if it discriminates between persons or property in a like situation[30] or contains classifications that are arbitrary or not based on any reason[31] or that have no fair or substantial relation to the purpose for which made.[32] A tax statute is void which lacks uniformity in its application;[33] which fails to provide valid standards of assessment, thereby delegating unlimited discretion to assessors to determine the tax burden to be placed on property;[34] or which selects one particular class of persons for a species of taxation without a rational support for such classification.[35]

A statute which imposes a tax on an assumption of fact which the taxpayer is forbidden to controvert denies equal protection[36] as where it singles out taxpayers on the basis of a conclusive presumption of the future use of platted land.[37] A statute which authorizes the compromise, adjustment, or cancellation of current taxes or tax suits must be so framed as to extend equal protection of its provisions and benefits to all taxpayers alike.[38]

In some peculiar circumstances, state tax classifications facially discriminating against interstate commerce may violate the Equal Protection Clause even when they pass muster under the Commerce Clause.[39]

Relation of tax to benefits.

The Equal Protection Clause does not require that the benefits of a tax be exactly proportional to the burdens,[40] only that it not be arbitrary in such respect,[41] and it is also not required that every taxpayer actually receive a direct benefit.[42] However, legislation which taxes the parties disproportionately to the benefit conferred[43] or excludes from its benefits any person on whom the tax falls[44] cannot be upheld.

Tax amnesty.

A tax amnesty statute which differentiates between taxpayers whose delinquencies came to light before the statute and those who reveal their delinquencies in exchange for amnesty does not violate the equal protection rights of those denied amnesty.[45]

Footnotes

1 U.S.—Western and Southern Life Ins. Co. v. State Bd. of Equalization of California, 451 U.S. 648, 101 S. Ct. 2070, 68 L. Ed. 2d 514 (1981).
Kan.—State ex rel. Tomasic v. Kansas City, 230 Kan. 404, 636 P.2d 760 (1981).
Mich.—American Amusement Co., Inc. v. Department of Revenue, 91 Mich. App. 573, 283 N.W.2d 803 (1979).

2 U.S.—Kahn v. Shevin, 416 U.S. 351, 94 S. Ct. 1734, 40 L. Ed. 2d 189 (1974).
Ala.—Howell v. Malone, 388 So. 2d 908 (Ala. 1980).
Cal.—Sea-Land Service, Inc. v. County of Alameda, 12 Cal. 3d 772, 117 Cal. Rptr. 448, 528 P.2d 56 (1974).

3 U.S.—Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va., 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).

4 U.S.—Weissinger v. Boswell, 330 F. Supp. 615 (M.D. Ala. 1971).
Cal.—Estate of Morrison, 130 Cal. App. 3d 543, 181 Cal. Rptr. 834 (4th Dist. 1982).
Pa.—Fisher Controls Co., Inc. v. Com., 476 Pa. 119, 381 A.2d 1253 (1977).

5 Okla.—Oklahoma Ass'n for Equitable Taxation v. City of Oklahoma City, 1995 OK 62, 901 P.2d 800 (Okla. 1995).
Wine coolers
Because characterization of wine coolers as wine for purpose of imposition of wine tax did not effect fundamental rights or create suspect classification, statutory definition of wine was subject only to minimal judicial scrutiny under equal protection analysis.
Wash.—Cosro, Inc. v. Liquor Control Bd., 107 Wash. 2d 754, 733 P.2d 539 (1987).

6 U.S.—Charleston Federal Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945).
Cal.—Metropolitan Stevedore Co. v. County of Los Angeles, 29 Cal. App. 3d 565, 105 Cal. Rptr. 595 (2d Dist. 1972).

7 U.S.—Welch v. Henry, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87, 118 A.L.R. 1142 (1938).
Ill.—Knupper v. Property Tax Appeal Bd., 61 Ill. App. 3d 884, 18 Ill. Dec. 876, 378 N.E.2d 340 (2d Dist. 1978).
N.Y.—Association of the Bar of City of New York v. Lewisohn, 34 N.Y.2d 143, 356 N.Y.S.2d 555, 313 N.E.2d 30 (1974).
Utterly arbitrary
Md.—Nordheimer v. Montgomery County, 307 Md. 85, 512 A.2d 379 (1986).

8 U.S.—Armour v. City of Indianapolis, Ind., 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012).
Md.—Supervisor of Assessments of Howard County v. Scheidt, 85 Md. App. 154, 582 A.2d 563 (1990).
Wash.—Forbes v. City of Seattle, 113 Wash. 2d 929, 785 P.2d 431 (1990).
Legislature has considerable liberty
Conn.—Johnson v. Meehan, 225 Conn. 528, 626 A.2d 244 (1993).

9 U.S.—Exxon Corp. v. Eagerton, 462 U.S. 176, 103 S. Ct. 2296, 76 L. Ed. 2d 497 (1983).
Idaho—Sheppard v. State, Dept. of Employment, 103 Idaho 501, 650 P.2d 643 (1982).
Mass.—Smith v. Commissioner of Revenue, 383 Mass. 139, 417 N.E.2d 967 (1981).
Double taxation not prohibited
U.S.—Swiss Oil Corporation v. Shanks, 273 U.S. 407, 47 S. Ct. 393, 71 L. Ed. 709 (1927).
Okla.—Oklahoma Tax Commission v. Smith, 1980 OK 74, 610 P.2d 794 (Okla. 1980).

10 Minn.—Minnesota Automatic Merchandising Council v. Salomone, 682 N.W.2d 557 (Minn. 2004).
Va.—Cox Cable Hampton Roads, Inc. v. City of Norfolk, 247 Va. 64, 439 S.E.2d 366 (1994).

Wash.—City of Seattle v. Rogers Clothing for Men, Inc., 114 Wash. 2d 213, 787 P.2d 39 (1990).

11 Mo.—Associated Industries of Missouri v. Director of Revenue, 857 S.W.2d 182 (Mo. 1993), judgment rev'd on other grounds, 511 U.S. 641, 114 S. Ct. 1815, 128 L. Ed. 2d 639 (1994).

12 Conn.—D.A. Pincus and Co., Inc. v. Meehan, 235 Conn. 865, 670 A.2d 1278 (1996).

13 U.S.—Colgate v. Harvey, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, Madden v. Commonwealth of Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).

Idaho—J.C. Penney Co. v. Diefendorf, 54 Idaho 374, 32 P.2d 784 (1934).

Okla.—Oklahoma Tax Commission v. Smith, 1980 OK 74, 610 P.2d 794 (Okla. 1980).

14 Fla.—State ex rel. Lane Drug Stores v. Simpson, 122 Fla. 582, 166 So. 227 (1935), adhered to on reh'g, 122 Fla. 670, 166 So. 262 (1936).

Ky.—City of Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248 (1948).

La.—Interstate Oil Pipe Line Co. v. Guilbeau, 217 La. 160, 46 So. 2d 113 (1950).

15 U.S.—Continental Baking Co. v. Woodring, 55 F.2d 347 (D. Kan. 1931), aff'd, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

Or.—Gale v. Department of Revenue, State of Or., 293 Or. 221, 646 P.2d 27 (1982).

16 U.S.—Armour v. City of Indianapolis, Ind., 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012).

17 Ind.—South Bend Public Transp. Corp. v. City of South Bend, 428 N.E.2d 217 (Ind. 1981).

Mass.—Shea v. Boston Edison Co., 431 Mass. 251, 727 N.E.2d 41 (2000).

Or.—Savage v. Munn, 317 Or. 283, 856 P.2d 298 (1993).

Commonwealth lessees

Pa.—Radnor Tp. School Dist., Radnor Tp., Delaware County v. Betty, 30 Pa. Commw. 425, 30 Pa. Commw. 651, 373 A.2d 1361 (1977).

Equitable and legal owners

Ind.—Hawkins v. Marion County Bd. of Review, 182 Ind. App. 205, 394 N.E.2d 957 (1979).

18 U.S.—Caskey Baking Co. v. Commonwealth of Virginia, 313 U.S. 117, 61 S. Ct. 881, 85 L. Ed. 1223 (1941).

Ohio—Valvoline Instant Oil Change, Inc. v. Tracy, 78 Ohio St. 3d 53, 1997-Ohio-7, 676 N.E.2d 114 (1997).

Va.—Cox Cable Hampton Roads, Inc. v. City of Norfolk, 247 Va. 64, 439 S.E.2d 366 (1994).

19 U.S.—Neild v. District of Columbia, 110 F.2d 246 (App. D.C. 1940).

Haw.—In re Pacific Marine & Supply Co., Ltd., 55 Haw. 572, 524 P.2d 890 (1974).

N.J.—Ring v. Mayor and Council of Borough of North Arlington, 136 N.J.L. 494, 56 A.2d 744 (N.J. Sup. Ct. 1948), judgment aff'd, 1 N.J. 24, 61 A.2d 508 (1948).

20 Conn.—United Illuminating Co. v. City of New Haven, 179 Conn. 627, 427 A.2d 830 (1980).

Mass.—Shea v. Boston Edison Co., 431 Mass. 251, 727 N.E.2d 41 (2000).

Or.—Savage v. Munn, 317 Or. 283, 856 P.2d 298 (1993).

Business real property

N.J.—Bonnet v. State, 141 N.J. Super. 177, 357 A.2d 772 (Law Div. 1976), judgment aff'd, 155 N.J. Super. 520, 382 A.2d 1175 (App. Div. 1978), aff'd, 78 N.J. 325, 395 A.2d 194 (1978).

Geographical areas

U.S.—Weissinger v. Boswell, 330 F. Supp. 615 (M.D. Ala. 1971).

Intangible property

Kan.—Von Ruden v. Miller, 231 Kan. 1, 642 P.2d 91 (1982).

Minerals

Minn.—Petition of U. S. Steel Corp., 324 N.W.2d 638 (Minn. 1982).

Nursery stock

Ill.—Knupper v. Property Tax Appeal Bd., 61 Ill. App. 3d 884, 18 Ill. Dec. 876, 378 N.E.2d 340 (2d Dist. 1978).

Notes and receivables

U.S.—Charleston Federal Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945).

21 U.S.—Lake Superior Consol. Iron Mines v. Lord, 271 U.S. 577, 46 S. Ct. 627, 70 L. Ed. 1093 (1926).

Fla.—Hertz Corp. v. Walden, 299 So. 2d 121 (Fla. 2d DCA 1974), opinion adopted, 320 So. 2d 385 (Fla. 1975).

Ill.—Nabisco, Inc. v. Korzen, 68 Ill. 2d 451, 12 Ill. Dec. 122, 369 N.E.2d 829 (1977).

Moneyed capital

U.S.—Union Bank & Trust Co. v. Phelps, 288 U.S. 181, 53 S. Ct. 321, 77 L. Ed. 687, 83 A.L.R. 1438 (1933).

Alcoholic beverages

U.S.—Barcelo & Cia, S. en C., v. Buscaglia, 169 F.2d 82 (C.C.A. 1st Cir. 1948).

22 § 1520.

23 U.S.—Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940).

Alaska—Fairbanks North Star Borough Assessor's Office v. Golden Heart Utilities, Inc., 13 P.3d 263 (Alaska 2000).

Conn.—United Illuminating Co. v. City of New Haven, 179 Conn. 627, 427 A.2d 830 (1980).

Choice of alternative statutory methods

N.M.—U. V. Industries, Inc. v. Property Tax Division of Taxation and Revenue Dept., 93 N.M. 651, 1979-NMCA-147, 603 P.2d 1108 (Ct. App. 1979).

24 U.S.—Southern Ry. Co. v. Watts, 260 U.S. 519, 43 S. Ct. 192, 67 L. Ed. 375 (1923).

Geographic areas

N.Y.—Colt Industries, Inc. v. Finance Adm'r of City of New York, 54 N.Y.2d 533, 446 N.Y.S.2d 237, 430 N.E.2d 1290 (1982).

25 U.S.—Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940).

Tenn.—Federal Exp. Corp. v. Tennessee State Bd. of Equalization, 717 S.W.2d 873 (Tenn. 1986).

W. Va.—Petition of Maple Meadow Min. Co. for Relief from Real Property Assessment for Tax Year 1992, 191 W. Va. 519, 446 S.E.2d 912 (1994).

Secured and unsecured taxes

Cal.—Abrams v. City and County of San Francisco, 48 Cal. App. 2d 1, 119 P.2d 197 (1st Dist. 1941).

26 § 1523.

27 U.S.—Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940).

N.Y.—In re Section 14, Block 4367, Lot 1, Borough of Brooklyn, City of New York, 117 N.Y.S.2d 36 (Sup 1952).

Foreclosure for unpaid tax liens

U.S.—Nelson v. City of New York, 352 U.S. 103, 77 S. Ct. 195, 1 L. Ed. 2d 171 (1956).

Reduction for prompt payment

Pa.—Keator v. Lackawanna County, 292 Pa. 269, 141 A. 37 (1928).

Time for foreclosure

N.Y.—Sonmax, Inc. v. City of New York, 43 N.Y.2d 253, 401 N.Y.S.2d 173, 372 N.E.2d 9 (1977).

28 U.S.—Puget Sound Power & Light Co. v. City of Seattle, Wash., 291 U.S. 619, 54 S. Ct. 542, 78 L. Ed. 1025 (1934).

Ohio—GTE North, Inc. v. Zaino, 96 Ohio St. 3d 9, 2002-Ohio-2984, 770 N.E.2d 65 (2002).

29 U.S.—Stewart Dry Goods Co. v. Lewis, 294 U.S. 550, 55 S. Ct. 525, 79 L. Ed. 1054 (1935).

Iowa—Dickinson v. Porter, 240 Iowa 393, 35 N.W.2d 66 (1948).

Va.—Virginia Elec. & Power Co. v. Com., 169 Va. 688, 194 S.E. 775 (1938).

30 U.S.—Hillsborough Tp., Somerset County, N.J., v. Cromwell, 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946).

Idaho—Justus v. Board of Equalization of Kootenai County, 101 Idaho 743, 620 P.2d 777 (1980).

Ohio—GTE North, Inc. v. Zaino, 96 Ohio St. 3d 9, 2002-Ohio-2984, 770 N.E.2d 65 (2002).

Collection of garbage

N.Y.—Juleah Co. v. Incorporated Village of Roslyn, 56 A.D.2d 483, 392 N.Y.S.2d 926 (2d Dep't 1977), order aff'd, 44 N.Y.2d 845, 406 N.Y.S.2d 760, 378 N.E.2d 123 (1978).

31 U.S.—Hartford Steam Boiler Inspection & Ins. Co. v. Harrison, 301 U.S. 459, 57 S. Ct. 838, 81 L. Ed. 1223 (1937).

Neb.—Panebianco v. City of Omaha, 151 Neb. 463, 37 N.W.2d 731 (1949).

Ohio—National Tube Co. v. Peck, 159 Ohio St. 98, 50 Ohio Op. 74, 111 N.E.2d 11 (1953).

32 U.S.—Air-Way Elec. Appliance Corp. v. Day, 266 U.S. 71, 45 S. Ct. 12, 69 L. Ed. 169 (1924).

Fla.—State ex rel. Vars v. Knott, 135 Fla. 206, 184 So. 752 (1938).

Neb.—Panebianco v. City of Omaha, 151 Neb. 463, 37 N.W.2d 731 (1949).

33 N.Y.—Bethlehem Steel Corp. v. Board of Ed. of City School Dist. of Lackawanna, 61 A.D.2d 147, 402 N.Y.S.2d 655 (4th Dep't 1978), judgment aff'd, 44 N.Y.2d 831, 406 N.Y.S.2d 752, 378 N.E.2d 115 (1978).

Abatement of taxes for certain persons

Me.—Opinion of the Justices, 402 A.2d 601 (Me. 1979).

Geographic differences

U.S.—McCarthy v. Jones, 449 F. Supp. 480 (S.D. Ala. 1978).

Methods of foreclosure

N.Y.—Old Dutch Lands, Inc. v. City of New York, 55 Misc. 2d 384, 286 N.Y.S.2d 86 (Sup 1967).

34 N.Y.—Rego Properties Corp. v. Finance Adm'r, 102 Misc. 2d 641, 424 N.Y.S.2d 621 (Sup 1980).

35 Cal.—Associated Indemnity Corp. v. Pacific Southwest Airlines, 128 Cal. App. 3d 898, 180 Cal. Rptr. 685 (4th Dist. 1982).

Taxation of state workers' compensation fund

Utah—State Tax Commission v. Department of Finance, 576 P.2d 1297 (Utah 1978).

36 U.S.—Heiner v. Donnan, 285 U.S. 312, 52 S. Ct. 358, 76 L. Ed. 772 (1932).

N.Y.—In re Watson's Estate, 185 Misc. 735, 56 N.Y.S.2d 443 (Sur. Ct. 1945).

37 **Nonagricultural use**

Fla.—Bass v. General Development Corp., 374 So. 2d 479 (Fla. 1979).

38 **Delinquents and nondelinquents**

Cal.—San Bernardino County v. Way, 18 Cal. 2d 647, 117 P.2d 354 (1941).

Fla.—Richey v. Wells, 123 Fla. 284, 166 So. 817 (1936).

Ohio—Voinovich v. Board of Park Commrs. of Cleveland Metropolitan Park Dist., 42 Ohio St. 2d 511, 71 Ohio Op. 2d 506, 330 N.E.2d 434 (1975).

39 U.S.—General Motors Corp. v. Tracy, 519 U.S. 278, 117 S. Ct. 811, 136 L. Ed. 2d 761 (1997).

40 Ala.—Beeland Wholesale Co. v. Kaufman, 234 Ala. 249, 174 So. 516 (1937).

Del.—Stephan v. State Tax Commissioner, 245 A.2d 552 (Del. 1968).

Pa.—Paul L. Smith, Inc. v. Southern York County School Dist., 44 Pa. Commw. 227, 403 A.2d 1034 (1979).

41 U.S.—Dane v. Jackson, 256 U.S. 589, 41 S. Ct. 566, 65 L. Ed. 1107 (1921).

Ga.—McLennan v. Aldredge, 223 Ga. 879, 159 S.E.2d 682 (1968).

Unemployment compensation acts, see § 1479.

Palpably disproportionate benefits and burden

Pa.—Leventhal v. City of Philadelphia, 518 Pa. 233, 542 A.2d 1328 (1988).

42 Pa.—Paul L. Smith, Inc. v. Southern York County School Dist., 44 Pa. Commw. 227, 403 A.2d 1034 (1979).

43 U.S.—Road Imp. Dist. No. 7 of Crittenden County, Ark. v. St. Louis-San Francisco R. Co., 28 F.2d 825 (C.C.A. 8th Cir. 1928).

44 Kan.—Atchison, T. & S.F. Ry. Co. v. Clark, 60 Kan. 826, 58 P. 477 (1899).

45 N.Y.—People v. Christie, 133 Misc. 2d 468, 505 N.Y.S.2d 310 (Sup 1986).

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16C C.J.S. Constitutional Law § 1508

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

a. In General

§ 1508. State constitutional provisions requiring uniformity of taxation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3572, 3573

Some state constitutional provisions pertaining to uniformity of taxation are substantially similar to the Equal Protection Clause of the Fourteenth Amendment.

The Equal Protection Clause of the Fourteenth Amendment and some state constitutional provisions pertaining to uniformity of taxation are substantially similar,[1] and generally, what violates one will contravene the other.[2] A state constitutional provision assessing property according to its acquisition value has been upheld[3] as has a provision precluding counties from recovering the costs of tax collection from local taxing bodies.[4] However, a constitutional amendment which requires the fixing of separate and distinct tax levies under certain circumstances denies equal protection.[5]

A state constitutional article establishing valuation principles for taxation of oil and gas reserves under such article does not violate principles of equal protection.[6]

Footnotes

1 Kan.—Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 542 P.2d 278 (1975).
Pa.—Aldine Apartments, Inc. v. Com., 493 Pa. 480, 426 A.2d 1118, 15 A.L.R.4th 260 (1981).
More stringent limitations in state constitution
Ill.—Allegro Services, Ltd. v. Metropolitan Pier and Exposition Authority, 172 Ill. 2d 243, 216 Ill. Dec. 689, 665 N.E.2d 1246 (1996).

2 Ala.—Hamilton v. Adkins, 250 Ala. 557, 35 So. 2d 183 (1948).
Kan.—Topeka Cemetery Ass'n v. Schnellbacher, 218 Kan. 39, 542 P.2d 278 (1975).
Pa.—In re Pennsylvania Co. for Insurances on Lives and Granting Annuities, 345 Pa. 130, 27 A.2d 57 (1942).
Neither provision violated
N.Y.—Trump v. Chu, 65 N.Y.2d 20, 489 N.Y.S.2d 455, 478 N.E.2d 971 (1985).
Ohio—Desenco, Inc. v. Akron, 84 Ohio St. 3d 535, 1999-Ohio-368, 706 N.E.2d 323 (1999).

3 Cal.—Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, 22 Cal. 3d 208, 149 Cal. Rptr. 239, 583 P.2d 1281 (1978).

4 Ill.—City of Joliet v. Bosworth, 64 Ill. 2d 516, 1 Ill. Dec. 355, 356 N.E.2d 543 (1976).

5 Neb.—State ex rel. Douglas v. State Bd. of Equalization and Assessment, 205 Neb. 130, 286 N.W.2d 729 (1979).

6 Cal.—Lynch v. State Bd. of Equalization, 164 Cal. App. 3d 94, 210 Cal. Rptr. 335 (3d Dist. 1985).

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16C C.J.S. Constitutional Law § 1509

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

a. In General

§ 1509. Exemptions from taxation

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3573

With the limitation that they must be founded on some reason and not on mere caprice, a state may grant exemptions from taxes imposed by general laws.

A state may grant exemptions from taxes imposed by general laws[1] and may deny exemptions,[2] but the grant or denial of an exemption must be rationally related to a legitimate state purpose.[3] The fact that exemptions from taxation increase the burden placed on property taxed does not show a denial of the equal protection of the law.[4]

Exemptions from taxation may be granted to various particular persons, properties, or entities, such as elderly persons,[5] veterans,[6] homesteads,[7] leased property,[8] business inventory,[9] industrial revenue bond property,[10] mutual investment companies,[11] or manufacturing or processing plants[12] or to particular projects, such as a port authority project[13] or a redevelopment project.[14] However, where public property is not involved, a property tax exemption must be based upon the use

of the property and not on the basis of ownership alone since a classification of private property for tax purposes based solely on ownership unlawfully discriminates against one citizen in favor of another.[15]

The State may tax particular kinds of business and exempt other kinds of business closely akin thereto[16] or may tax one type of business occupation and exempt another not of the same class.[17] Exemptions may be granted to domestic corporations and denied to foreign corporations,[18] but it has been held that the denial of exemptions to nonresidents which are granted to residents is a violation of the guaranty of equal protection.[19]

A statute requiring that exempt property be both owned and used for charitable purposes does not deny equal protection by treating a charity which leases property differently from one which owns the property,[20] and a statute which exempts from taxation household furniture and effects at the place of a person's domicile does not deny equal protection to persons who are domiciled in other municipalities but who own homes in the taxing community.[21]

Under a statute providing that all personal property located and used in a business in the state should be subject to taxation but that stocks of merchandise held by nonresidents in a storage warehouse for storage only should be exempt, a tax on personal property stored in warehouses by a resident or domestic corporation does not deprive the resident or corporation of equal protection of the laws.[22] However, an exemption to organizations which discriminate in their membership on the basis of race violates equal protection.[23]

CUMULATIVE SUPPLEMENT

Cases:

The question of whether a liberty interest is entitled to due process protection is not merely the weight of the individual's interest, but whether the nature of the interest is one within the contemplation of the liberty or property language of the Fourteenth Amendment. U.S. Const. Amend. 14. State v. Burgins, 464 S.W.3d 298 (Tenn. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Schuylkill Trust Co. v. Com. of Pennsylvania, 302 U.S. 506, 58 S. Ct. 295, 82 L. Ed. 392 (1938).
Mont.—Powder River County v. State, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).
Ohio—City of Dayton v. Cloud, 30 Ohio St. 2d 295, 59 Ohio Op. 2d 370, 285 N.E.2d 42 (1972).

2 U.S.—Virgo Corp. v. Paiewonsky, 6 V.I. 256, 384 F.2d 569 (3d Cir. 1967).
Ill.—Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill. App. 3d 816, 17 Ill. Dec. 92, 375 N.E.2d 1376 (3d Dist. 1978).
Mo.—American Polled Hereford Ass'n v. City of Kansas City, 626 S.W.2d 237 (Mo. 1982).
Elimination of previous exemption upheld
Conn.—Johnson v. Meehan, 225 Conn. 528, 626 A.2d 244 (1993).

3 U.S.—Colgate v. Harvey, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, Madden v. Commonwealth of Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).
Mass.—Sylvester v. Commissioner Of Revenue, 445 Mass. 304, 837 N.E.2d 662 (2005).
N.H.—Opinion of the Justices, 144 N.H. 374, 746 A.2d 981 (1999).
Rational basis for difference in treatment

Me.—Spare-Time Recreation, Inc. v. State, 666 A.2d 81 (Me. 1995).

Under state constitution

Ill.—Chicagoland Chamber of Commerce v. Pappas, 378 Ill. App. 3d 334, 317 Ill. Dec. 113, 880 N.E.2d 1105 (1st Dist. 2007).

4 Cal.—City and County of San Francisco v. McGovern, 28 Cal. App. 491, 152 P. 980 (3d Dist. 1915).

Ill.—People ex rel. County Collector of Cook County v. Northwestern University, 51 Ill. 2d 131, 281 N.E.2d 334 (1972).

5 N.H.—Opinion of the Justices, 110 N.H. 206, 266 A.2d 111 (1970).

Pa.—Borough of Rochester v. Geary, 30 Pa. Commw. 493, 373 A.2d 1380 (1977).

6 Me.—Lambert v. Wentworth, 423 A.2d 527 (Me. 1980).

N.Y.—Archer v. Town of North Greenbush, 80 A.D.2d 361, 439 N.Y.S.2d 729 (3d Dep't 1981).

Disparate treatment unconstitutional

N.Y.—Burrows v. Board of Assessors for Town of Chatham, 64 N.Y.2d 33, 484 N.Y.S.2d 520, 473 N.E.2d 748 (1984).

Residency requirement invalid

Me.—Lambert v. Wentworth, 423 A.2d 527 (Me. 1980).

Tax exemption statute violated equal protection

U.S.—Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S. Ct. 2862, 86 L. Ed. 2d 487 (1985).

7 Ohio—State ex rel. Swetland v. Kinney, 62 Ohio St. 2d 23, 16 Ohio Op. 3d 14, 402 N.E.2d 542 (1980).

Decrease in assessment of owner-occupied dwellings

Md.—Supervisor of Assessments of Harford County v. Otremba, 50 Md. App. 608, 440 A.2d 403 (1982).

8 **Space in sports facility**

Minn.—Metropolitan Sports Facilities Com'n v. County of Hennepin, 478 N.W.2d 487 (Minn. 1991).

9 Mont.—Montana Stockgrowers Ass'n v. State Dept. of Revenue, 238 Mont. 113, 777 P.2d 285 (1989).

10 Kan.—State ex rel. Tomasic v. Kansas City, 237 Kan. 572, 701 P.2d 1314 (1985).

11 Tex.—Calvert v. Capital Southwest Corp., 441 S.W.2d 247 (Tex. Civ. App. Austin 1969), writ refused n.r.e., (Oct. 1, 1969).

12 Ga.—Great Northern Nekoosa Corp. v. Board of Tax Assessors of Early County, 244 Ga. 624, 261 S.E.2d 346 (1979).

13 Kan.—State ex rel. Tomasic v. Kansas City, 230 Kan. 404, 636 P.2d 760 (1981).

14 N.Y.—Akari House, Inc. v. Irizzary, 81 Misc. 2d 543, 366 N.Y.S.2d 955 (Sup 1975).

15 Kan.—State ex rel. Stephan v. Parrish, 257 Kan. 294, 891 P.2d 445 (1995).

16 U.S.—Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480, 82 Ohio L. Abs. 312 (1959).

N.D.—Southern Valley Grain Dealers Ass'n v. Board of County Com'rs of Richland County, 257 N.W.2d 425 (N.D. 1977).

Or.—Garbade v. City of Portland, 188 Or. 158, 214 P.2d 1000 (1950) (overruled on other grounds by, Multnomah County v. Mittleman, 275 Or. 545, 552 P.2d 242 (1976)).

17 Or.—Wittenberg v. Mutton, 203 Or. 438, 280 P.2d 359 (1955).

18 Or.—Methodist Book Concern v. Galloway, 186 Or. 585, 208 P.2d 319 (1949).

Pa.—In re Pennsylvania Co. for Insurances on Lives and Granting Annuities, 345 Pa. 130, 27 A.2d 57 (1942).

19 Ala.—Eliasberg Bros. Mercantile Co. v. Grimes, 204 Ala. 492, 86 So. 56, 11 A.L.R. 300 (1920).

Ga.—Redwine v. Southern Co., 206 Ga. 377, 57 S.E.2d 194 (1950).

Foreign charity

Mass.—Mary C. Wheeler School, Inc. v. Board of Assessors of Seekonk, 368 Mass. 344, 331 N.E.2d 888 (1975).

20 Colo.—First Nat. Bank of Denver v. Board of County Com'rs, City and County of Denver, 189 Colo. 128, 538 P.2d 427 (1975).

Ill.—Telco Leasing, Inc. v. Allphin, 63 Ill. 2d 305, 347 N.E.2d 729 (1976).

21 Mass.—Weinstock v. Town of Hull, 367 Mass. 66, 323 N.E.2d 867 (1975).

22 U.S.—Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480, 82 Ohio L. Abs. 312 (1959).

23 U.S.—Falkenstein v. Department of Revenue for State of Or., 350 F. Supp. 887 (D. Or. 1972); Pitts v. Department of Revenue for State of Wis., 333 F. Supp. 662 (E.D. Wis. 1971).

N.J.—Brunson v. Rutherford Lodge No. 547 of Benev. and Protective Order of Elks, 128 N.J. Super. 66, 319 A.2d 80 (Law Div. 1974).

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16C C.J.S. Constitutional Law § 1510

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1510. Income taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3572 to 3574

While an income tax statute or ordinance which results in arbitrary discrimination is invalid, a state income tax levied equally on all made subject to it according to valid classifications does not contravene the guaranty of equal protection.

While the imposition of an income tax which results in arbitrary discrimination is unconstitutional as a denial of the equal protection of the laws,[1] a tax levied by the State or a political subdivision equally on all incomes made subject to the tax, according to valid classifications, does not contravene the constitutional guaranty.[2] All that is required is that the classification scheme be reasonably related to a legitimate governmental purpose.[3]

Without denying equal protection, the government may graduate income tax rates in proportion to the amount of income,[4] make rationally based deductions applicable[5] and deny those which do not satisfy this criterion,[6] provide for different methods of depreciation,[7] and authorize credits against the tax due.[8] Furthermore, in accordance with the equal protection guaranty, exemptions may be made applicable with respect to all incomes below a certain amount,[9] and incomes received from certain

sources,[10] or received by particular entities such as corporations,[11] and personal exemptions of a particular amount for the taxpayer and his or her dependents may be allowed.[12] The fact that a statute levying an emergency relief tax on dividends received from domestic corporations imposes the tax at different rates and with different deductions from those applied to other types of income does not alone establish a violation of the Equal Protection Clause,[13] and an option given taxpayers to deduct or not deduct federal income taxes paid in computing state taxable income, with a different tax rate applying depending on the taxpayer's election, does not create an invidious classification of taxpayers.[14]

Greater exemptions may be allowed to married than to single persons[15] so long as there is a rational basis for the distinction.[16] The courts have upheld a statute requiring a husband and wife who file a joint federal income tax for a taxable year to file a joint state income tax return for such taxable year[17] and a statute permitting husbands and wives who both earn income to obtain a tax advantage unavailable to married persons where only one spouse earns income.[18] A statute which requires married taxpayers to file a joint return in order to obtain a refund but permits a refund to divorced or legally separated persons does not deprive a taxpayer who is married and living apart but not legally separated from his spouse of equal protection.[19]

A statute may not discriminate against nonresident taxpayers,[20] but a nondiscriminatory tax on nonresidents does not deny equal protection.[21]

A statute is valid which taxes residents on their income from sources both within and without the state, and nonresidents only on income from sources within the state, and permits the former to deduct losses wherever incurred while allowing the latter to deduct only those incurred within the state.[22]

A policy, under which a taxing authority applies a rebuttable inference that an in-state domicile continues for persons moving overseas on foreign-situs job assignments but does not apply such inference to persons moving to another state, does not deny equal protection.[23]

The courts have upheld differences in the assessment of income taxes,[24] and in collection practices,[25] including the setoff of debts due the State from projected tax refunds while depriving the taxpayer of the benefit of rights, defenses, or exemptions normally available against private creditors.[26]

Footnotes

1 U.S.—Colgate v. Harvey, 296 U.S. 404, 56 S. Ct. 252, 80 L. Ed. 299, 102 A.L.R. 54 (1935) (overruled in part on other grounds by, Madden v. Commonwealth of Kentucky, 309 U.S. 83, 60 S. Ct. 406, 84 L. Ed. 590, 125 A.L.R. 1383 (1940)).
Md.—Blaustein v. Levin, 176 Md. 423, 4 A.2d 861 (1939).
Vt.—Oxx v. Vermont Dept. of Taxes, 159 Vt. 371, 618 A.2d 1321 (1992).

2 U.S.—Walters v. City of St. Louis, Mo., 347 U.S. 231, 74 S. Ct. 505, 98 L. Ed. 660 (1954).
N.J.—Salorio v. Glaser, 82 N.J. 482, 414 A.2d 943 (1980).
N.Y.—Manganaro v. Tully, 88 A.D.2d 206, 453 N.Y.S.2d 889 (3d Dep't 1982).
Foreign corporation
Miss.—Brady v. John Hancock Mut. Life Ins. Co., 342 So. 2d 295 (Miss. 1977).
Rates different for different businesses
Mass.—Drapkin v. Commissioner of Revenue, 420 Mass. 333, 649 N.E.2d 1094 (1995).

3 Utah—Blue Cross and Blue Shield of Utah v. State, 779 P.2d 634 (Utah 1989).

4 U.S.—Melton v. Kurtz, 575 F.2d 547 (5th Cir. 1978).
Md.—Foley v. Comptroller of Treasury, 259 Md. 330, 269 A.2d 807 (1970).

5 Conn.—D.A. Pincus and Co., Inc. v. Meehan, 235 Conn. 865, 670 A.2d 1278 (1996).
Mich.—Michigan Consol. Gas Co. v. State, 72 Mich. App. 426, 250 N.W.2d 85 (1976), judgment aff'd, 404 Mich. 301, 273 N.W.2d 10 (1978).
Okla.—Oklahoma Tax Commission v. Smith, 1980 OK 74, 610 P.2d 794 (Okla. 1980).
Gambling losses
Ill.—Byrd v. Hamer, 408 Ill. App. 3d 467, 347 Ill. Dec. 825, 943 N.E.2d 115 (2d Dist. 2011).
N.Y.—Karlsberg v. Tax Appeals Tribunal of State, 85 A.D.3d 1347, 925 N.Y.S.2d 237 (3d Dep't 2011).
Losses sustained after specified year
Ill.—Bodine Elec. Co. v. Allphin, 70 Ill. App. 3d 844, 27 Ill. Dec. 356, 389 N.E.2d 168 (1st Dist. 1979), judgment aff'd, 81 Ill. 2d 502, 43 Ill. Dec. 695, 410 N.E.2d 828 (1980).
Rent paid
Mass.—Massachusetts Teachers Ass'n v. Secretary of Com., 384 Mass. 209, 424 N.E.2d 469 (1981).

6 Cal.—Hall v. Franchise Tax Bd., 244 Cal. App. 2d 843, 53 Cal. Rptr. 597 (5th Dist. 1966).

7 Kan.—Missouri Pac. R. Co. v. McDonald, 207 Kan. 744, 486 P.2d 1347 (1971), adhered to, 208 Kan. 479, 493 P.2d 280 (1972).

8 Minn.—Schumann v. Commissioner of Taxation, 312 Minn. 477, 253 N.W.2d 130 (1977).
Limitation on homestead credit
Wis.—Bonneville's Estate v. Wisconsin Dept. of Revenue, 91 Wis. 2d 726, 284 N.W.2d 52 (1979).
Property tax credit
Mich.—Rosenbaum v. Michigan Dept. of Treasury, Revenue Division, 77 Mich. App. 332, 258 N.W.2d 216 (1977).

9 U.S.—W.C. Peacock & Co. v. Pratt, 121 F. 772 (C.C.A. 9th Cir. 1903).
Del.—Betts v. Zeller, 263 A.2d 290 (Del. 1970).
Minn.—Reed v. Bjornson, 191 Minn. 254, 253 N.W. 102 (1934).

10 Cal.—John McClure Estate v. Johnson, 53 Cal. App. 2d 512, 128 P.2d 198 (2d Dist. 1942).
Ind.—Miles v. Department of Treasury, 209 Ind. 172, 199 N.E. 372 (1935).
Mo.—Wolff v. Director of Revenue, 791 S.W.2d 390 (Mo. 1990).
Denial of income exclusion to military retirees
Or.—Huckaba v. Johnson, 281 Or. 23, 573 P.2d 305 (1978).

11 U.S.—Franklin v. Carter, 51 F.2d 345 (C.C.A. 10th Cir. 1931).
Mont.—Mills v. State Board of Equalization, 97 Mont. 13, 33 P.2d 563 (1934).
Apportionment of deductions of multistate taxpayer
Va.—Com. v. Olin Corp., 212 Va. 53, 181 S.E.2d 818 (1971).
Out-of-state income
Ark.—Dunklin v. McCarroll, 199 Ark. 800, 136 S.W.2d 675 (1939).
N.M.—New Mexico Glycerin Co. v. Gallegos, 1944-NMSC-010, 48 N.M. 65, 145 P.2d 995 (1944).

12 Ill.—Thorpe v. Mahin, 43 Ill. 2d 36, 250 N.E.2d 633 (1969).

13 U.S.—Welch v. Henry, 305 U.S. 134, 59 S. Ct. 121, 83 L. Ed. 87, 118 A.L.R. 1142 (1938).

14 Okla.—Oklahoma Tax Commission v. Smith, 1980 OK 74, 610 P.2d 794 (Okla. 1980).

15 Idaho—Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).
Minn.—Reed v. Bjornson, 191 Minn. 254, 253 N.W. 102 (1934).

16 Kan.—Peden v. State, 261 Kan. 239, 930 P.2d 1 (1996).

17 Ohio—Tiefel v. Gilligan, 40 Ohio App. 2d 491, 69 Ohio Op. 2d 426, 321 N.E.2d 247 (10th Dist. Franklin County 1974).

18 N.Y.—Application of Kenning, 72 Misc. 2d 929, 339 N.Y.S.2d 793 (Sup 1972), judgment aff'd, 43 A.D.2d 815, 350 N.Y.S.2d 1017 (3d Dep't 1973).

19 Mass.—Roberts v. State Tax Commission, 360 Mass. 724, 277 N.E.2d 499 (1972).

20 Cal.—County of Alameda v. City and County of San Francisco, 19 Cal. App. 3d 750, 97 Cal. Rptr. 175, 48 A.L.R.3d 332 (1st Dist. 1971).

21 Del.—Stephan v. State Tax Commissioner, 245 A.2d 552 (Del. 1968).
Me.—Morse v. Johnson, 282 A.2d 597 (Me. 1971).
Earnings within state
Me.—Stevens v. State Tax Assessor, 571 A.2d 1195 (Me. 1990).
Distinction between wage earners and self-employed persons

A distinction between wage earners and self-employed persons, under which only the latter are entitled to the nonresidence exemption from Pennsylvania income taxes under the reciprocal personal income tax agreement between Pennsylvania and New Jersey, does not deny equal protection to the former.
Pa.—Com. v. Buckley, 510 Pa. 326, 508 A.2d 281 (1986).

22 U.S.—Shaffer v. Carter, 252 U.S. 37, 40 S. Ct. 221, 64 L. Ed. 445 (1920).

23 Okla.—Suglove v. Oklahoma Tax Commission, 1979 OK 168, 605 P.2d 1315 (Okla. 1979).

24 **Limitations period**
Ga.—Blackmon v. Monroe, 233 Ga. 656, 212 S.E.2d 827 (1975).

25 **Reimbursement**
Ill.—Sherman-Reynolds, Inc. v. Mahin, 47 Ill. 2d 323, 265 N.E.2d 640 (1970).
Withholding
Mich.—Molter v. Department of Treasury, 443 Mich. 537, 505 N.W.2d 244 (1993).

26 Or.—Brown v. Lobdell, 36 Or. App. 397, 585 P.2d 4 (1978).

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16C C.J.S. Constitutional Law § 1511

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1511. Income taxes—Federal income taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3572 to 3574

Various aspects of federal income taxation have been upheld as against equal protection challenges.

Federal taxes on income which are rationally based do not violate the equal protection concept embodied in the Due Process Clause.[1] Various aspects of federal income taxation have been upheld as against equal protection challenges, such as distinctions drawn with respect to persons subject to tax,[2] dependency exemptions,[3] exclusions from income,[4] and deductions.[5]

The equal protection concept is not denied by the apportionment of net earnings of a nonexempt cooperative corporation in determining the amount of a patronage dividend deduction in a different manner than in the case of other cooperatives.[6] A statute according tax benefits to lobbying by tax-exempt veterans' organizations but not to other tax-exempt groups has been upheld.[7]

A Tax Reform Act transitional rule excepting certain taxpayers from a new Internal Revenue Code section that limited passive activity losses did not violate the Equal Protection Clause when applied to a taxpayer who had passive activity losses from a

partnership's interest in low-income housing but did not meet the criteria of the transitional rule as the rule was not based on race, religion, or a desire to prevent exercise of constitutional rights.[8]

CUMULATIVE SUPPLEMENT

Cases:

Expenses incurred solely as the result of the taxpayer's desire to maintain a home in one place while working in another are irrelevant to the maintenance and prosecution of the employer's business, for purposes of income tax deduction for travel expenses while away from home in the pursuit of trade or business. 26 U.S.C.A. § 162(a)(2). Liljeberg v. Commissioner of Internal Revenue Service, 907 F.3d 623 (D.C. Cir. 2018).

[END OF SUPPLEMENT]

Footnotes

1 **Retroactivity of statute**
U.S.—Austin v. U.S., 611 F.2d 117 (5th Cir. 1980).

2 U.S.—U.S. v. Maryland Savings-Share Ins. Corp., 400 U.S. 4, 91 S. Ct. 16, 27 L. Ed. 2d 4 (1970); U.S. v. Anderson, 625 F.2d 910 (9th Cir. 1980).

3 U.S.—Harris v. C.I.R., T.C. Memo. 2007-239, T.C.M. (RIA) P 2007-239 (2007).

4 **Pension plan contributions**
U.S.—Kosmal v. C. I. R., 670 F.2d 842 (9th Cir. 1982).

5 **Gambling losses**
U.S.—Lakhani v. C.I.R., 142 T.C. 151, 2014 WL 941478 (2014); Tschetschot v. C.I.R., T.C. Memo. 2007-38, T.C.M. (RIA) P 2007-038 (2007).
Deductions for active participants in certain pension plan
U.S.—Shankar v. C.I.R., Tax Ct. Rep. Dec. (RIA) 143.5, 2014 WL 4211285 (T.C. 2014).
Charitable deduction
U.S.—Haswell v. U. S., 205 Ct. Cl. 421, 500 F.2d 1133 (1974).
Educational expenses
U.S.—Danielson v. Quinn, 17 V.I. 317, 482 F. Supp. 275 (D.V.I. 1980).
Legal fees
U.S.—Messina v. U. S., 202 Ct. Cl. 155, 1973 WL 21450 (1973).
Losses
U.S.—Marks v. C.I.R., 390 F.2d 598 (9th Cir. 1968).

6 U.S.—FCX, Inc. v. U. S., 209 Ct. Cl. 145, 531 F.2d 515 (1976).

7 U.S.—Regan v. Taxation With Representation of Washington, 461 U.S. 540, 103 S. Ct. 1997, 76 L. Ed. 2d 129 (1983).

8 U.S.—Ziegler v. C.I.R., T.C. Memo. 2007-166, T.C.M. (RIA) P 2007-166 (2007), decision aff'd, 282 Fed. Appx. 869 (2d Cir. 2008).

16C C.J.S. Constitutional Law § 1512

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1512. Inheritance, estate, and gift taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3569, 3570

The imposition of a tax on estates, inheritances, or gifts, unless based on an arbitrary classification, is not a denial of equal protection of the laws.

The imposition of a special tax on inheritances is not a deprivation of equal protection of the law[1] even though the rate is graduated in proportion to the amount of the inheritance,[2] or the degree of relationship to the deceased,[3] or computed on the total of gifts and inheritances and apportioned among the several beneficiaries.[4]

Similarly, the imposition of an inheritance tax is not a deprivation of equal protection even though the statute discriminates between certain classes of relatives who are beneficiaries[5] or even between life estates in accordance with the persons to whom the remainder over is limited,[6] or changes the method of assessment of estates in remainder or reversion[7] or of estates of resident and nonresident decedents,[8] or precludes a widow from reducing the market value of a pension provided by an employer by

the amount of federal income tax the widow would be required to pay on an annuity,[9] or levies an additional tax on the transfer of investments of decedent which had not been taxed during his or her life.[10]

An inheritance tax is not rendered void by exemption of reasonable amounts,[11] or of property belonging to certain classes of decedents[12] or passing to certain classes of heirs,[13] or by exemption of property devised to domestic charitable corporations without also exempting property devised to foreign charitable corporations.[14] Also, the courts have upheld a provision for the proration of exemptions from inheritance tax in proportion to the fraction of the entire property that is within the state when a decedent leaves property both within and without the state,[15] as well as a provision excluding from an exemption from a succession tax bequests to charitable organizations which are unable to prove their organization within a certain period after the death of the transferor.[16]

An act is not invalid because it includes provisions for taxation on transfers inter vivos made in contemplation of death[17] although a statute construing gifts within a specified time previous to the donor's death as made in contemplation of death is invalid as an arbitrary classification.[18] The amount of the tax may validly be based on the value of the entire estate transmitted[19] or the time of adoption of a beneficiary.[20] Imposition of a succession tax on property passing by inter vivos gift, with reservation of rights in the grantor, in addition to a succession tax, does not deny equal protection.[21]

A law providing for a tax on the succession of persons who died prior to the enactment of the statute and whose estates remain undistributed at the time of the enactment has been held not a denial of equal protection,[22] but there is also authority to the contrary effect.[23] The imposition of an estate tax on the transfer of property by the death of the owner in lieu of an inheritance tax in effect at the time of transfer of ownership does not violate the Equal Protection Clause.[24]

A law imposing, in addition to the inheritance tax, an estate tax measured by the amount allowed by the United States as a credit on the federal tax levied on the same estate does not deny equal protection of the laws.[25] Statutes may deny[26] or permit[27] the deduction of federal estate taxes in determining state inheritance taxes and may validly direct an executor to prorate the federal estate tax among the distributees who have received property contributing to the liability for such tax unless otherwise directed by the will.[28] A statute confining the allocation of the federal estate tax to those who had not received their share of the estate when the estate tax was paid does not deny equal protection of the law.[29]

Federal estate tax.

A change of statutory policy regarding the allowance of interest on refunds does not violate equal protection[30] and neither does retroactively increasing the maximum estate tax rate,[31] treating gifts made to charitable donees and noncharitable donees differently under the relation-back doctrine,[32] or disallowing the marital deduction on separate property willed to a spouse because it is "converted community" property.[33]

The retroactive application of an amendment to a state tax statute, which seeks to avoid the loss of estate tax revenue by maintaining the state estate tax at the level it was prior to a change in federal law that increases the estate tax deduction, does not violate federal equal protection requirements.[34]

Gift tax.

Equal protection is not violated by gift tax statute which applies to individual donors and excludes corporations[35] or by the use of federal tax liability in computing state gift tax liability although taxpayers are classified according to past gift giving.[36]

Footnotes

1 Colo.—In re Hunter's Estate, 97 Colo. 279, 49 P.2d 1009, 101 A.L.R. 1202 (1935).
Ga.—Farkas v. Smith, 147 Ga. 503, 94 S.E. 1016 (1918).
Mo.—Brown v. State, 323 Mo. 138, 19 S.W.2d 12 (1929).
Nonresident decedent
Ohio—Guaranty Trust Co. of New York v. State, 36 Ohio App. 45, 8 Ohio L. Abs. 487, 172 N.E. 674 (8th Dist. Cuyahoga County 1930).
Transfer effective at death
U.S.—Guaranty Trust Co. of New York v. Blodgett, 287 U.S. 509, 53 S. Ct. 244, 77 L. Ed. 463 (1933).

2 U.S.—Knowlton v. Moore, 178 U.S. 41, 20 S. Ct. 747, 44 L. Ed. 969 (1900).
Cal.—In re Timken's Estate, 158 Cal. 51, 109 P. 608 (1910).
N.J.—Howell v. Edwards, 88 N.J.L. 134, 96 A. 186 (N.J. Sup. Ct. 1915), aff'd, 89 N.J.L. 713, 99 A. 1070 (N.J. Ct. Err. & App. 1916).

3 N.D.—Strauss v. State, 36 N.D. 594, 162 N.W. 908 (1917).

4 Or.—In re Heck's Estate, 120 Or. 80, 250 P. 735 (1926).
Wash.—In re Henry's Estate, 189 Wash. 510, 66 P.2d 350 (1937).

5 Colo.—First Nat. Bank of Denver v. People, 183 Colo. 320, 516 P.2d 639 (1973).
Mass.—Beals v. Commissioner of Corporations and Taxation, 370 Mass. 781, 352 N.E.2d 692 (1976).

6 U.S.—Billings v. People of State of Illinois, 188 U.S. 97, 23 S. Ct. 272, 47 L. Ed. 400 (1903).

7 Mass.—Attorney General v. Stone, 209 Mass. 186, 95 N.E. 395 (1911).

8 U.S.—Maxwell v. Bugbee, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919).
N.Y.—In re Cole's Estate, 237 A.D. 372, 261 N.Y.S. 35 (1st Dep't 1932), aff'd, 263 N.Y. 643, 189 N.E. 737 (1934).
N.C.—Rigby v. Clayton, 274 N.C. 465, 164 S.E.2d 7 (1968).

9 N.J.—Matter of Romnes' Estate, 148 N.J. Super. 401, 372 A.2d 1115 (App. Div. 1977), judgment aff'd, 79 N.J. 139, 398 A.2d 543 (1979).

10 U.S.—Watson v. State Comptroller of New York, 254 U.S. 122, 41 S. Ct. 43, 65 L. Ed. 170 (1920).

11 Conn.—Appeal of Nettleton, 76 Conn. 235, 56 A. 565 (1903).
Mich.—In re Fox's Estate, 154 Mich. 5, 117 N.W. 558 (1908), rev'd on reh'g on other grounds, 159 Mich. 420, 124 N.W. 60 (1909).
Wis.—Black v. State, 113 Wis. 205, 89 N.W. 522 (1902).

12 **Residents of other states**
U.S.—Shaw v. Commissioner of Corporations & Taxation of Massachusetts, 414 U.S. 803, 94 S. Ct. 51, 38 L. Ed. 2d 40 (1973).
Cal.—Estate of Mears, 90 Cal. App. 3d 885, 153 Cal. Rptr. 566 (1st Dist. 1979).

13 U.S.—Campbell v. State of Cal., 200 U.S. 87, 26 S. Ct. 182, 50 L. Ed. 382 (1906).
Mass.—Davis v. Commissioner of Revenue, 390 Mass. 1006, 458 N.E.2d 1195 (1984).
N.H.—Estate of Robitaille v. New Hampshire Dept. of Revenue Admin., 149 N.H. 595, 827 A.2d 981 (2003).
Inheritance from father through mother
Wis.—In re Clark's Will, 182 Wis. 384, 196 N.W. 839 (1924).

14 U.S.—Board of Education of Kentucky Annual Conference of Methodist Episcopal Church v. People of State of Illinois, 203 U.S. 553, 27 S. Ct. 171, 51 L. Ed. 314 (1906).
Wash.—In re Thomas' Estate, 185 Wash. 113, 53 P.2d 305 (1936).

15 Or.—Tharalson v. State Dept. of Revenue, 281 Or. 9, 573 P.2d 298 (1978).

16 Conn.—Hoenig v. Connelly, 141 Conn. 266, 105 A.2d 775 (1954).

17 N.J.—Renwick v. Martin, 126 N.J. Eq. 564, 10 A.2d 293 (Prerog. Ct. 1939).

18 U.S.—Schlesinger v. State of Wisconsin, 270 U.S. 230, 46 S. Ct. 260, 70 L. Ed. 557, 43 A.L.R. 1224 (1926).
La.—Succession of Williams, 171 La. 151, 129 So. 801 (1930).

19 U.S.—Whitney v. State Tax Commission of New York, 309 U.S. 530, 60 S. Ct. 635, 84 L. Ed. 909 (1940).

20 Colo.—People ex rel. Dunbar v. Schaefer, 129 Colo. 215, 268 P.2d 420 (1954).

21 N.M.—Harvey v. Vigil, 1967-NMSC-183, 78 N.M. 303, 430 P.2d 874 (1967).

22 U.S.—Cahen v. Brewster, 203 U.S. 543, 27 S. Ct. 174, 51 L. Ed. 310 (1906).
Mont.—State v. District Court of Second Judicial Dist. of Montana in and for Silver Bow County, 70 Mont. 322, 225 P. 804 (1924).

23 Wis.—In re Le Feber's Will, 223 Wis. 393, 271 N.W. 95, 109 A.L.R. 732 (1937).

24 Okla.—In re Bass' Estate, 1947 OK 362, 200 Okla. 14, 190 P.2d 800 (1947).

25 N.C.—Hagood v. Doughton, 195 N.C. 811, 143 S.E. 841 (1928).

26 U.S.—Stebbins v. Riley, 268 U.S. 137, 45 S. Ct. 424, 69 L. Ed. 884, 44 A.L.R. 1454 (1925).
Cal.—Estate of Koerner, 44 Cal. App. 3d 447, 118 Cal. Rptr. 752 (2d Dist. 1975).
Mich.—In re Fish's Estate, 219 Mich. 369, 189 N.W. 177 (1922).

27 **Meaning of "maximum credit allowable"**
Ohio—In re Robinson's Estate, 34 Ohio Op. 298, 72 N.E.2d 109 (Prob. Ct. 1946).
Deduction allowed on property in state alone
Cal.—In re Guthman's Estate, 125 Cal. App. 2d 408, 270 P.2d 875 (2d Dist. 1954).

28 Cal.—In re Pearson's Estate, 90 Cal. App. 2d 436, 203 P.2d 52 (3d Dist. 1949).

29 Mass.—Merchants Nat. Bank of Boston v. Merchants Nat. Bank of Boston, 318 Mass. 563, 62 N.E.2d 831 (1945).

30 U.S.—First Nat. Bank of Or. v. U. S., 215 Ct. Cl. 609, 571 F.2d 21 (1978).

31 U.S.—NationsBank of Texas, N.A. v. U.S., 269 F.3d 1332 (Fed. Cir. 2001).

32 U.S.—Rosano v. U.S., 245 F.3d 212 (2d Cir. 2001).

33 U.S.—Ricards v. U.S., 683 F.2d 1219 (9th Cir. 1981).

34 N.J.—Estate of Kosakowski v. Director, New Jersey Div. of Taxation, 26 N.J. Tax 524, 2012 WL 3711190 (Super. Ct. App. Div. 2012).

35 Okla.—Daube v. Oklahoma Tax Com'n, 1944 OK 218, 194 Okla. 487, 152 P.2d 687 (1944).

36 Vt.—Pabst v. Commissioner of Taxes, 136 Vt. 126, 388 A.2d 1181 (1978).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1513. Inheritance, estate, and gift taxes—Powers of appointment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3569, 3570

Subject to the requirements of equal protection, the privilege of taking a remainder on a donee's exercising or failing to exercise a power of appointment may be taxed.

The privilege of taking a remainder on a donee's exercising or failing to exercise a power of appointment may be taxed,[1] but equal protection is denied by a statute which imposes a succession tax on an interest received, on the death of the donee of a power derived from a gift antedating the statute but exempting from the tax interests received under similar gifts which might be made in the future.[2] A statute may tax a transfer subject to a power of appointment[3] and may impose a tax on the exercise of a power of appointment by the donee of the power[4] notwithstanding that the donee does not own the property and cannot exercise the power for his own benefit.[5] It is enough that one person acquires economic interest in property through the death of another person even though such acquisition is in part the automatic consequence of death or related to decedent merely because of his or her power of appointment among a restricted class.[6] A statute providing that transfers under powers of appointment would

be deemed to occur, for inheritance tax purposes, either at the death of the donor of the power or that of the donee, depending upon whether the donor died before or after a specified date, has been upheld.[7]

Footnotes

1 R.I.—Manning v. Board of Tax Com'rs of Rhode Island, 46 R.I. 400, 127 A. 865 (1925).

2 U.S.—Binney v. Long, 299 U.S. 280, 57 S. Ct. 206, 81 L. Ed. 239 (1936).

3 Cal.—In re Elston's Estate, 32 Cal. App. 2d 652, 90 P.2d 608 (1st Dist. 1939).

4 **Date not arbitrarily selected**
N.Y.—In re Vanderbilt's Estate, 281 N.Y. 297, 22 N.E.2d 379 (1939), judgment aff'd, 309 U.S. 530, 60 S. Ct. 635, 84 L. Ed. 909 (1940).

5 N.Y.—In re Vanderbilt's Estate, 281 N.Y. 297, 22 N.E.2d 379 (1939), judgment aff'd, 309 U.S. 530, 60 S. Ct. 635, 84 L. Ed. 909 (1940).

6 U.S.—Whitney v. State Tax Commission of New York, 309 U.S. 530, 60 S. Ct. 635, 84 L. Ed. 909 (1940).

7 Ky.—Kentucky Bd. of Tax Appeals v. Citizens Fidelity Bank & Trust Co., 525 S.W.2d 68 (Ky. 1975).

16C C.J.S. Constitutional Law § 1514

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1514. Transfer or recording taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3565, 3580

Where based on reasonable classifications, a transfer or recording tax is not violative of the Equal Protection Clause.

Where based on a reasonable classification, a tax in the nature of an excise tax may validly be levied on transfers of property;[1] and such taxes may be confined to transfers of particular kinds of property,[2] such as agricultural land,[3] condominiums,[4] cooperative interests,[5] or shares of corporate stock,[6] or to transfers made in a particular manner,[7] as by deed[8] or by sale on a stock or commodity exchange.[9]

Transfer tax exemptions.

A challenge to a transfer tax exemption under the Equal Protection Clause is subject to rational-basis review.[10]

The exemption of transfers of property from nonresident decedents in case of reciprocal exemptions in other states is not invalid even though the exemption does not extend to tax laws of foreign countries.[11]

A statutory exemption from transfer tax on retirement plan benefits payable to the beneficiary of an employee's "domestic partner," as defined under a domestic partnership act, which requires that an employee and a partner, who are both over age 62, establish a domestic partnership by executing an affidavit setting forth their eligibility to enter into such relationship and then filing the affidavit with a local registrar, does not violate equal protection when compared to the statutory exemption from transfer tax on benefits payable to the beneficiary of a federal government employee under the Civil Service Retirement Act where the exemption of tax on death benefits arising from federal employment can be seen as a substitute for the Social Security death benefit exemption.[12]

Recording tax.

A statutory provision which in substance exempts from the payment of a recording tax a mortgage under which the debt secured matures within a specified period has been condemned as violative of the Equal Protection Clause.[13] A statutory exception from a provision for the exemption from other taxation of mortgages on which the recording tax has been paid, of mortgages owned by entities which, in respect of taxation, enjoy privileges not accorded to other persons or corporations, does not violate the Equal Protection Clause.[14]

Footnotes

1 U.S.—Nickel v. Cole, 256 U.S. 222, 41 S. Ct. 467, 65 L. Ed. 900 (1921).
Md.—Nordheimer v. Montgomery County, 307 Md. 85, 512 A.2d 379 (1986).
N.J.—Drew Associates of N.J., L.P. v. Travisano, 122 N.J. 249, 584 A.2d 807 (1991).

2 N.Y.—People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), aff'd, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).

3 Md.—Supervisor of Assessments of Howard County v. Scheidt, 85 Md. App. 154, 582 A.2d 563 (1990).

4 Md.—Nordheimer v. Montgomery County, 307 Md. 85, 512 A.2d 379 (1986).

5 N.J.—Drew Associates of N.J., L.P. v. Travisano, 122 N.J. 249, 584 A.2d 807 (1991).

6 N.Y.—People ex rel. Hatch v. Reardon, 184 N.Y. 431, 77 N.E. 970 (1906), aff'd, 204 U.S. 152, 27 S. Ct. 188, 51 L. Ed. 415 (1907).
Graduated tax
N.Y.—Williams v. State, 273 N.Y. 458, 6 N.E.2d 402 (1936).

7 U.S.—Broadnax v. State of Missouri, 219 U.S. 285, 31 S. Ct. 238, 55 L. Ed. 219 (1911).

8 U.S.—Keeney v. Comptroller of State of New York, 222 U.S. 525, 32 S. Ct. 105, 56 L. Ed. 299 (1912).

9 U.S.—Broadnax v. State of Missouri, 219 U.S. 285, 31 S. Ct. 238, 55 L. Ed. 219 (1911).

10 Ill.—Rajterowski v. City of Sycamore, 405 Ill. App. 3d 1086, 346 Ill. Dec. 313, 940 N.E.2d 682, 263 Ed. Law Rep. 900 (2d Dist. 2010).

11 Wis.—In re Miller's Estate, 239 Wis. 551, 2 N.W.2d 256, 139 A.L.R. 1056 (1942).

12 N.J.—Lugano v. Director, Division of Taxation, 28 N.J. Tax 49, 2014 WL 2464891 (2014).

13 U.S.—Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 48 S. Ct. 423, 72 L. Ed. 770 (1928).

14 U.S.—Farmers' & Mechanics' Sav. Bank of Minneapolis v. State of Minnesota, 232 U.S. 516, 34 S. Ct. 354, 58 L. Ed. 706 (1914).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1515. Taxes on corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3562, 3564, 3565 to 3568, 3579, 3580

Without denying equal protection of the laws, corporations may be subjected to taxes which are not imposed on individuals, partnerships, or unincorporated associations or may be assessed by different methods than are applied in the assessment of individuals.

Classifications embodied in corporate taxation schemes are valid for purposes of the Equal Protection Clause if they are rationally related to a legitimate governmental purpose.[1]

Without denying equal protection of the laws, corporations may be subjected to taxes which are not imposed on individuals,[2] or on other businesses,[3] including those organized as partnerships[4] or unincorporated associations,[5] or may be assessed by different methods than are applied in the assessment of individuals.[6] A back tax law authorizing reassessment of a corporation's property without providing for reassessment of property of an individual does not violate the constitutional guaranty of equal protection.[7] Corporate franchises may be taxed at a different rate from that levied on tangible property,[8] and corporations of

a particular kind may be taxed to the exclusion of others[9] or by a different method than others,[10] a tax which falls equally on all who are in the same circumstances being valid.[11]

The State may make any reasonable classification of corporations.[12] The application of a statute imposing a corporation franchise tax to a corporation exempt from the payment of an occupational license tax is not a denial of equal protection.[13] However, it has been held that the provisions of a proposed act whereby the property of a corporation would be taxed on a different and more favorable basis than that on which similar property of other owners would be taxed are invalid.[14]

The franchises and property of one corporation may not be assessed at a different rate or by a different method than other corporations of the same class,[15] nor may a classification of corporations for tax purposes be unreasonable or arbitrary.[16] However, a statute imposing a higher franchise tax on corporations making a profit than on those operating at a loss is not unconstitutional,[17] and a tax may be greater on one corporation than on another owing to a difference in the methods of issuing stock.[18]

Where not all of the authorized stock has been issued, classification of a corporation cannot reasonably be based on authorized capital stock.[19] However, the difference between par value stock and no-par value stock constitutes ample basis for classification for excise tax purposes,[20] and a statute declaring that, for purpose of fixing the license fee or franchise tax, no-par value stock shall be valued at a specified amount,[21] or shall be taken at value received therefor at issuance,[22] or shall be taxed at a stated sum per share,[23] is not a denial of equal protection.

The amount of the tax may be graduated according to the amount or size of property or business adopted as the standard of measurement for the purpose of computation,[24] and the statute may provide for minimum and maximum amounts[25] or authorize the tax commission to make equitable adjustments.[26] An act providing that a mortgage shall be treated as an interest in the property affected thereby, and the amount deducted from the value of the property assessed against the mortgagor, has been declared void for exempting railroads and other quasi-public corporations from its scope.[27]

An "add-back" provision of a state corporate tax, denying crude oil producers a deduction of federal windfall profit taxes from their taxable income, has been held not to violate the Equal Protection Clause.[28]

Footnotes

1 N.J.—Horizon Blue Cross Blue Shield of New Jersey v. State, 425 N.J. Super. 1, 39 A.3d 228 (App. Div. 2012), also published at, 26 N.J. Tax 575, 2012 WL 3711188 (Super. Ct. App. Div. 2012).
N.D.—NL Industries, Inc. v. North Dakota State Tax Com'r, 498 N.W.2d 141, 33 A.L.R.5th 873 (N.D. 1993).
Ohio—J.M. Smucker, L.L.C. v. Levin, 113 Ohio St. 3d 337, 2007-Ohio-2073, 865 N.E.2d 866 (2007).
Classification not unreasonable
Mont.—GBN, Inc. v. Montana Dept. of Revenue, 249 Mont. 261, 815 P.2d 595 (1991).
Tax not arbitrarily and irrationally discriminatory
Alaska—Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska 1985).

2 U.S.—Baldwin Tool Works v. Blue, 240 F. 202 (N.D. W. Va. 1916).
Ad valorem taxes on personal property
U.S.—Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S. Ct. 1001, 35 L. Ed. 2d 351 (1973).

3 Cal.—Morning Star Co. v. Board of Equalization, 201 Cal. App. 4th 737, 135 Cal. Rptr. 3d 457 (3d Dist. 2011).

4 Mass.—Nashoba Communications Ltd. Partnership v. Board of Assessors of Danvers, 429 Mass. 126, 706 N.E.2d 653 (1999).

5 Ill.—Michigan Millers' Mut. Fire Ins. Co. v. McDonough, 358 Ill. 575, 193 N.E. 662 (1934).

Utah—Blue Cross and Blue Shield of Utah v. State, 779 P.2d 634 (Utah 1989).

6 U.S.—Michigan Railroad Tax Cases (23 cases), 138 F. 223 (C.C.W.D. Mich. 1905), aff'd, 201 U.S. 245, 26 S. Ct. 459, 50 L. Ed. 744 (1906).

Deduction of domestic mortgages

Md.—City of Baltimore v. German-American Fire Ins. Co. of Baltimore City, 132 Md. 380, 103 A. 980 (1918).

Time of valuation

Mo.—Stouffer v. Crawford, 248 S.W. 581 (Mo. 1923).

Full valuation

Assessment of corporate stock at full value as against taxation of land at percentage of sale value presented no constitutional ground for complaint.

U.S.—Klein v. Board of Tax Sup'rs of Jefferson County, Ky., 282 U.S. 19, 51 S. Ct. 15, 75 L. Ed. 140, 73 A.L.R. 679 (1930).

7 U.S.—White River Lumber Co. v. State of Arkansas ex rel. Applegate, 279 U.S. 692, 49 S. Ct. 457, 73 L. Ed. 903 (1929).

Ark.—Arkansas Fuel Oil Co. v. State, 180 Ark. 765, 22 S.W.2d 556 (1929).

8 U.S.—Coulter v. Louisville & N.R. Co., 196 U.S. 599, 25 S. Ct. 342, 49 L. Ed. 615 (1905).

Paid-up stock as basis

A franchise tax on domestic corporations according to their paid-up capital stock is valid.

Ala.—Atlantic Coast Line Ry. Co. v. State, 204 Ala. 80, 85 So. 424 (1920) (overruled on other grounds by, South Cent. Bell Telephone Co. v. State, 789 So. 2d 133 (Ala. 1999)).

Conn.—Underwood Typewriter Co. v. Chamberlain, 94 Conn. 47, 108 A. 154 (1919), aff'd, 254 U.S. 113, 41 S. Ct. 45, 65 L. Ed. 165 (1920).

9 U.S.—Savannah, Thunderbolt & I H Ry v. Mayor and Aldermen of the City of Savannah, 198 U.S. 392, 25 S. Ct. 690, 49 L. Ed. 1097 (1905).

N.Y.—People ex rel. Vandervoort Realty Co. v. Glynn, 194 N.Y. 387, 87 N.E. 434 (1909).

Interstate or foreign commerce

Submission to commerce clause by excluding from franchise tax statute foreign corporations exclusively engaged in interstate or foreign commerce does not violate Equal Protection Clause.

U.S.—Matson Nav. Co. v. State Bd. of Equalization of State of Cal., 297 U.S. 441, 56 S. Ct. 553, 80 L. Ed. 791 (1936).

10 Ala.—Atlantic Coast Line Ry. Co. v. State, 204 Ala. 80, 85 So. 424 (1920) (overruled on other grounds by, South Cent. Bell Telephone Co. v. State, 789 So. 2d 133 (Ala. 1999)).

Va.—Virginia Elec. & Power Co. v. Com., 169 Va. 688, 194 S.E. 775 (1938).

Difference in loss carryover rules for S and C corporations

Pa.—DelGaizo v. Com., 8 A.3d 429 (Pa. Commw. Ct. 2010).

Higher rate for financial institutions

Ohio—Bank One Dayton, N.A. v. Limbach, 50 Ohio St. 3d 163, 553 N.E.2d 624 (1990).

11 U.S.—Barnsdall Oil Co. of California v. Merriam, 8 F. Supp. 185 (N.D. Cal. 1934).

La.—Armour & Co. v. Board of State Affairs, 156 La. 661, 101 So. 13 (1924).

Pa.—Hammermill Paper Co. v. City of Erie, 372 Pa. 85, 92 A.2d 422 (1952).

12 Va.—Langston v. City of Danville, 189 Va. 603, 54 S.E.2d 101 (1949).

13 La.—State v. Caldwell Sugars, 185 La. 503, 169 So. 526 (1936).

14 Mass.—In re Opinion of the Justices, 332 Mass. 769, 126 N.E.2d 795 (1955).

15 U.S.—Raymond v. Chicago Edison Co., 207 U.S. 42, 28 S. Ct. 14, 52 L. Ed. 90 (1907); In re Chicago Rys. Co., 175 F.2d 282 (7th Cir. 1949).

16 U.S.—Southwestern Bell Telephone Co. v. Middlekamp, 1 F.2d 563 (W.D. Mo. 1921).

17 Va.—Virginia Elec. & Power Co. v. Com., 169 Va. 688, 194 S.E. 775 (1938).

18 U.S.—New York, N. H. & H. R. Co. v. U. S., 269 F. 907 (C.C.A. 2d Cir. 1920).

19 U.S.—Air-Way Elec. Appliance Corp. v. Day, 266 U.S. 71, 45 S. Ct. 12, 69 L. Ed. 169 (1924).

Mo.—Montgomery Ward & Co. v. Becker, 334 Mo. 789, 69 S.W.2d 674 (1934).

Mont.—Chicago, M., St. P. & P.R. Co. v. Harmon, 89 Mont. 1, 295 P. 762 (1931).
W. Va.—State v. Azel Meadows Realty Co., 108 W. Va. 118, 150 S.E. 378 (1929).

20 U.S.—People of State of New York v. Latrobe, 279 U.S. 421, 49 S. Ct. 377, 73 L. Ed. 776, 65 A.L.R. 1341 (1929).
Fla.—Gray v. Central Florida Lumber Co., 104 Fla. 446, 140 So. 320 (1932).
N.M.—Southern Pac. Co. v. State Corporation Commission of New Mexico, 1937-NMSC-059, 41 N.M. 556, 72 P.2d 15 (1937).

21 U.S.—International Shoe Co. v. Shartel, 279 U.S. 429, 49 S. Ct. 380, 73 L. Ed. 781 (1929).
Mass.—American Uniform Co. v. Com., 237 Mass. 42, 129 N.E. 622 (1921).
Computation based on value
Kan.—Champlin Refining Co. v. Ryan, 147 Kan. 160, 75 P.2d 245 (1938).
Specifying presumed value
Fla.—Gray v. Central Florida Lumber Co., 104 Fla. 446, 140 So. 320 (1932).

22 U.S.—Southern Realty Corp. v. McCallum, 65 F.2d 934 (C.C.A. 5th Cir. 1933).

23 U.S.—People of State of New York v. Latrobe, 279 U.S. 421, 49 S. Ct. 377, 73 L. Ed. 776, 65 A.L.R. 1341 (1929).
N.Y.—People ex rel. D.W. Griffith, Inc., v. Loughman, 249 N.Y. 369, 164 N.E. 253 (1928).

24 U.S.—Republic Acceptance Corporation v. De Land, 275 F. 632 (E.D. Mich. 1921).
Cal.—El Dorado Oil Works v. McColgan, 34 Cal. 2d 731, 215 P.2d 4 (1950).
N.Y.—City Bank Farmers Trust Co. v. Graves, 272 N.Y. 1, 3 N.E.2d 612, 108 A.L.R. 333 (1936).
Borrowed capital
La.—State v. Mayer Sugar & Molasses Co., 204 La. 742, 16 So. 2d 251 (1943).
Combined unitary method
Cal.—Handlery v. Franchise Tax Board, 26 Cal. App. 3d 970, 103 Cal. Rptr. 465 (1st Dist. 1972).
Premiums received
Mo.—Massachusetts Bonding & Ins. Co. v. Chorn, 274 Mo. 15, 201 S.W. 1122 (1918).

25 U.S.—Republic Acceptance Corporation v. De Land, 275 F. 632 (E.D. Mich. 1921).
Mich.—Union Steam Pump Sales Co. v. Deland, 216 Mich. 261, 185 N.W. 353 (1921).

26 U.S.—United Advertising Corporation v. Lynch, 63 F.2d 243 (C.C.A. 2d Cir. 1933).
Tenn.—Great Atlantic & Pacific Tea Co. v. McCanless, 178 Tenn. 354, 157 S.W.2d 843 (1942).

27 U.S.—Railroad Tax Cases, 13 F. 722 (C.C.D. Cal. 1882).

28 **Rational basis and no discriminatory classification**
U.S.—Amerada Hess Corp. v. Director, Div. of Taxation, New Jersey Dept. of Treasury, 490 U.S. 66, 109 S. Ct. 1617, 104 L. Ed. 2d 58 (1989).

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16C C.J.S. Constitutional Law § 1516

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1516. Taxes on corporations—Foreign and domestic corporations

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3562, 3565 to 3567, 3579

Greater or different taxes may be imposed on foreign than on domestic corporations as a condition of their admission to the state, but such a tax may be unconstitutional if in other respects it operates as a denial of the equal protection of the laws.

While greater or different taxes may be imposed on foreign than on domestic corporations as a condition of their admission to the state,[1] the general rule is that the imposition of more onerous taxes or other burdens on foreign corporations than those imposed on domestic corporations is forbidden unless the discrimination between foreign and domestic corporations bears a rational relation to a legitimate state purpose.[2] Thus, a state may not constitutionally favor its own residents by taxing foreign corporations at a higher rate solely because of their residence.[3] In other words, the government may not impose on a foreign corporation which has already established a permanent business within the state taxes of a more burdensome character than those imposed on domestic corporations for the same privilege,[4] and foreign corporations may not be denied exemptions applicable to domestic corporations.[5] However, such a tax is void only when the new burden is one not placed on domestic corporations,[6]

and a new tax bringing foreign corporations up to the same plane of taxation as domestic corporations, as opposed to a tax in addition to one already imposed, is not invalid.[7] Furthermore, the constitutional guaranty of equal protection of the laws is not contravened by the imposition of a property tax on shares of stock in a foreign corporation owned by a domestic corporation[8] or a tax on domestic corporations in respect of the stock held by them in other domestic corporations.[9]

A tax on foreign corporations doing business in the state equal to the tax placed by the foreign state on the corporations of the state passing the statute is not a denial of equal protection of the laws[10] even though such rate is greater than that imposed on domestic corporations.[11] Furthermore, the refusal to grant a foreign corporation authority to engage in intrastate business is not a denial of equal protection where the company could organize a domestic corporation to do such business and then merge with the domestic corporation.[12]

A domestic corporation may be subjected to a particular kind of tax to which a foreign corporation is not subject,[13] and a statute requiring domestic corporations to pay license fees based on their entire capital stock while basing the fees of foreign corporations on the proportion of stock represented by their business within the state is not a denial of equal protection to the former.[14]

Interpreting a statutory provision which gives a group of affiliated foreign corporations the right to be assessed on their combined net income if they have filed a consolidated return of such income to the federal government, as applying to foreign corporations only where the entire group filing the return is doing business in the state, does not violate the constitutional guaranty.[15] However, equal protection is denied by a classification which exempts from payment of a privilege tax holding corporations whose subsidiaries pay a tax and denies the exemption to a holding corporation with foreign subsidiaries which do not make tax returns in the state.[16]

Footnotes

1 U.S.—Lincoln Nat. Life Ins. Co. v. Read, 325 U.S. 673, 65 S. Ct. 1220, 89 L. Ed. 1861 (1945).
Pa.—Com. v. Ford Motor Co., 350 Pa. 236, 38 A.2d 329 (1944).
W. Va.—State v. Azel Meadows Realty Co., 108 W. Va. 118, 150 S.E. 378 (1929).

2 Alaska—Principal Mut. Life Ins. Co. v. State, Div. of Ins. Dept. of Commerce and Economic Development, 780 P.2d 1023 (Alaska 1989).
Ill.—Mutual Life Ins. Co. of New York v. Washburn, 137 Ill. 2d 312, 148 Ill. Dec. 723, 561 N.E.2d 29 (1990).
Mass.—Prudential Ins. Co. of America v. Commissioner of Revenue, 429 Mass. 560, 709 N.E.2d 1096 (1999).
Retaliatory taxation
System of retaliatory taxation, which by definition discriminates between domestic and foreign insurance companies, is constitutionally sound, under Equal Protection Clause, insofar as it aims to equalize tax burden of domestic and foreign insurers, but imposition of retaliatory tax beyond point of equalization solely to generate revenue at expense of foreign insurers lacks legitimacy; thus, absent legitimate purpose apart from simply revenue creation, State may only retaliate to extent of difference between its actual tax bill and foreign state's hypothetical tax bill.
N.Y.—United Services Auto. Ass'n v. Curiale, 88 N.Y.2d 306, 645 N.Y.S.2d 413, 668 N.E.2d 384 (1996).

3 U.S.—Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869, 105 S. Ct. 1676, 84 L. Ed. 2d 751 (1985).
Promotion of domestic industry within state improper
S.D.—State v. American Bankers Ins. Co., 374 N.W.2d 609 (S.D. 1985).

4 U.S.—WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117, 89 S. Ct. 286, 21 L. Ed. 2d 242 (1968).
Mich.—Cleveland-Cliffs Iron Co. v. State of Mich., Dept. of Revenue, 329 Mich. 225, 45 N.W.2d 46 (1950).
Mont.—State v. North Am. Car Corp., 118 Mont. 183, 164 P.2d 161 (1945).

Subjecting notes or accounts receivable to ad valorem tax

U.S.—Wheeling Steel Corp. v. Glander, 337 U.S. 562, 69 S. Ct. 1291, 93 L. Ed. 1544, 55 Ohio L. Abs. 305 (1949).

Burden of showing discrimination

Where a tax was alleged to be an unreasonable discrimination but the full situation was not shown by the party making the allegation, the alleged discrimination could not be sustained.

U.S.—Concordia Fire Ins. Co. v. People of State of Illinois, 292 U.S. 535, 54 S. Ct. 830, 78 L. Ed. 1411 (1934).

5 **Nonprofit corporation**

U.S.—WHYY, Inc. v. Borough of Glassboro, 393 U.S. 117, 89 S. Ct. 286, 21 L. Ed. 2d 242 (1968).

6 Md.—Seaboard Commercial Corp. v. State Tax Commission, 181 Md. 234, 29 A.2d 294 (1942).

7 Pa.—Com. v. Columbia Gas & Elec. Corp., 336 Pa. 209, 8 A.2d 404, 131 A.L.R. 927 (1939).

8 Mass.—Bellows Falls Power Co. v. Com., 222 Mass. 51, 109 N.E. 891 (1915).

Pa.—Com. v. J. G. Brill Co., 287 Pa. 59, 134 A. 441 (1926).

9 U.S.—Ft. Smith Lumber Co. v. State of Arkansas ex rel. Arbuckle, 251 U.S. 532, 40 S. Ct. 304, 64 L. Ed. 396 (1920).

10 Ill.—Pacific Mut. Life Ins. Co. of Cal. v. Lowe, 354 Ill. 398, 188 N.E. 436, 91 A.L.R. 788 (1933).

11 Ill.—Home Ins. Co. v. Swigert, 104 Ill. 653, 1882 WL 10469 (1882).

12 Va.—Railway Express Agency v. Commonwealth, ex rel. State Corporation Commission, 153 Va. 498, 150 S.E. 419 (1929), aff'd, 282 U.S. 440, 51 S. Ct. 201, 75 L. Ed. 450, 72 A.L.R. 102 (1931).

13 U.S.—Northwestern Mut. Life Ins. Co. v. State of Wisconsin, 247 U.S. 132, 38 S. Ct. 444, 62 L. Ed. 1025 (1918).

Mich.—In re Truscon Steel Co., 246 Mich. 174, 224 N.W. 653 (1929).

Wash.—Spokane Intern. Ry. Co. v. State, 162 Wash. 395, 299 P. 362 (1931).

14 Wash.—Spokane Intern. Ry. Co. v. State, 162 Wash. 395, 299 P. 362 (1931).

15 Mass.—A.C. Lawrence Leather Co. v. Com., 254 Mass. 609, 150 N.E. 851 (1926).

16 Utah—First Security Corporation of Ogden v. State Tax Commission, 91 Utah 101, 63 P.2d 1062 (1936).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1517. Taxes on railroads

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3562, 3565 to 3567

Without violating the Equal Protection Clause, rules of taxation for railroads different from those for concerns engaged in other lines of business may be prescribed.

Different rules of taxation for railroad companies than for concerns engaged in other lines of business may be prescribed without violating the Equal Protection Clause.[1] Accordingly, a state may levy special taxes or higher tax rates on railroads[2] or railroad property,[3] tax railroads at a higher rate than individuals,[4] prescribe a special method of assessment of the property of railroads,[5] and even make subclassifications of railroads for the purpose of taxation.[6]

A statute which imposes a tax on railroads and at the same time excludes them from the benefit of the tax, however, is void;[7] and while a denial of the equal protection of the laws does not result from a mere mistake of judgment in the valuation of railroad property for taxation,[8] a deliberate, systematic, and intentional assessment under a general tax law of railroads at a higher per cent of their real value than other property,[9] or of one railroad at a higher per cent of its value than others,[10] does constitute a

violation of the equal protection guaranty. Equal protection of the law may be achieved by the appraisal of railroad properties for tax purposes at a fair market value.[11]

CUMULATIVE SUPPLEMENT

Cases:

State's collection of 10% of gross proceeds of rail surcharge on state general excise and use taxes on behalf of city and county had a rational relation to the purpose of reimbursing State for the cost of administering the surcharge and, thus, did not violate equal-protection clauses of the Hawaii or United States Constitutions. U.S. Const. Amend. 14; Haw. Const. art. 1, § 5; Haw. Rev. Stat. § 248-2.6. Tax Foundation of Hawai'i v. State, 144 Haw. 175, 439 P.3d 127 (2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Baker v. Druesedow, 263 U.S. 137, 44 S. Ct. 40, 68 L. Ed. 212 (1923).
La.—Louisiana & Arkansas Ry. Co. v. Goslin, 300 So. 2d 483 (La. 1974).
Full value of property not denial of equal protection
U.S.—Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940).

2 U.S.—Cincinnati, N.O. & T.P.R. Co. v. Commonwealth, 115 U.S. 321, 6 S. Ct. 57, 29 L. Ed. 414 (1885).
N.Y.—People ex rel. New York Cent. R. Co. v. Graves, 260 A.D. 227, 21 N.Y.S.2d 221 (3d Dep't 1940), order aff'd, 286 N.Y. 580, 35 N.E.2d 929 (1941).
Gross receipts tax
U.S.—New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).
Net operating income
N.J.—Central R. Co. of New Jersey v. Director, Division of Tax Appeals of Dept. of Treasury, 8 N.J. 15, 83 A.2d 527 (1951).
Mileage tax
Miss.—Yazoo & M.V.R. Co. v. Board of Mississippi Levee Com'rs, 188 Miss. 889, 195 So. 704 (1940).

3 Tenn.—Federal Exp. Corp. v. Tennessee State Bd. of Equalization, 717 S.W.2d 873 (Tenn. 1986).

4 U.S.—St. Louis, I.M. & S. Ry. Co. v. Davis, 132 F. 629 (C.C.E.D. Ark. 1904).

5 U.S.—Baker v. Druesedow, 263 U.S. 137, 44 S. Ct. 40, 68 L. Ed. 212 (1923).
Tax on gross earnings
U.S.—Illinois Cent. R. Co. v. State of Minn., 309 U.S. 157, 60 S. Ct. 419, 84 L. Ed. 670 (1940).
Property classified as that of public utility
Classification of railroad property for state tax purposes as that of a public utility rather than as industrial and commercial property was not violative of the Fourteenth Amendment.
U.S.—Louisville & N. R. Co. v. Atkins, 390 F. Supp. 576 (M.D. Tenn. 1975), judgment aff'd, 423 U.S. 802, 96 S. Ct. 10, 46 L. Ed. 2d 24 (1975).

6 U.S.—Atlantic Coast Line R. Co. v. Doughton, 262 U.S. 413, 43 S. Ct. 620, 67 L. Ed. 1051 (1923).
Surface and subsurface railroads
U.S.—People of State of New York ex rel. Metropolitan Street Ry. Co. v. State Board of Tax Com'rs, 199 U.S. 1, 25 S. Ct. 705, 50 L. Ed. 65 (1905).

7 Kan.—Atchison, T. & S.F. Ry. Co. v. Potter, 60 Kan. 808, 58 P. 471 (1899).

8 U.S.—Coulter v. Louisville & N.R. Co., 196 U.S. 599, 25 S. Ct. 342, 49 L. Ed. 615 (1905).

9 U.S.—Louisville & N. R. Co. v. Public Service Commission of Tenn., 389 F.2d 247 (6th Cir. 1968).
Ga.—Undercofler v. Seaboard Air Line R. Co., 222 Ga. 822, 152 S.E.2d 878 (1966).

Ill.—People ex rel. Toman v. Chicago Union Station Co., 383 Ill. 153, 48 N.E.2d 524 (1943).

10 Wash.—State v. Clausen, 63 Wash. 535, 116 P. 7 (1911).

11 **Single method of market data**

Vt.—In re Montpelier & Barre R. R. Corp., 135 Vt. 102, 369 A.2d 1379 (1977).

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16C C.J.S. Constitutional Law § 1518

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1518. Sales and use taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3576

If levied at a uniform rate, a sales or use tax is not obnoxious to the Equal Protection Clause.

A flat tax on sales levied at a uniform rate is not obnoxious to the Equal Protection Clause,[1] and this rule applies whether the tax is considered as a tax on the consumer's privilege to buy[2] or a tax on the particular transaction[3] as distinguished from an occupation tax based on the amount of sales.[4] Similarly, a sales tax act is not rendered invalid by a provision that the rate on intrastate sales of property for use outside the state shall be at the rate of the sales tax of the state where such property is to be used.[5] However, a statute which imposes a gross sales transaction tax on a graduated scale increasing in proportion with the increase in the amount of the gross sales is unconstitutional.[6]

Classifications made by statutes which impose sales and use taxes are not violative of the Equal Protection Clause where they are related to a legitimate state purpose,[7] rest on a rational basis and are reasonable and not arbitrary,[8] and are not applied in a discriminatory fashion;[9] and reasonable exemptions of certain classes from the operation of such taxes are also valid.[10] The

Equal Protection Clause is not violated by the fact that some areas generate more revenue from a sales tax than other areas do or that some areas or some taxpayers receive a greater benefit from sales taxes than do others.[11] Where, however, sales and use tax laws are unreasonable and arbitrary, they violate the Equal Protection Clause.[12]

A state sales tax on the privilege of selling, which the seller is liable for even though he cannot collect reimbursement from his or her customers, because either there is a bracket schedule which excuses collection of taxes from customers on sales less than a certain amount[13] or the products are sold in vending machines which are not equipped to pass the sales tax along to customers,[14] does not deny equal protection.

Lease or purchase.

Different sales or use taxes may be imposed depending on whether property is leased or purchased,[15] or is purchased with the intention of leasing,[16] or on whether the property leased is in the form in which it was acquired by the lessor or in a changed form.[17]

Out-of-state processes and sales.

The State may, without violating equal protection, impose use taxes on out-of-state manufacturing processes or sales where the products are used in state;[18] however, where such a tax is not uniform and has a discriminatory effect, it violates equal protection.[19] A sales tax may be imposed on the sale of products to be used out of state while such products retained solely for later out-of-state use are exempt from use taxes;[20] on the other hand, a sales tax can be imposed on the purchase and storage and possible later shipment out of state of materials but not on the purchase for resale or shipment out of state of materials.[21]

CUMULATIVE SUPPLEMENT

Cases:

Requiring taxpayer, a contractor that built, maintained, repaired, and removed mobile telecommunication towers and equipment, to pay sales or use tax on building materials used in furnishing, installing, or connecting mobile telecommunications services, as well as sales tax on the gross receipts from the furnishing of the same services, did not violate taxpayer's right to equal protection; while the taxing scheme enacted by the Legislature might have made operating as a consumer for the purchase of goods used in furnishing those services less advantageous, there was nothing that forced taxpayer to adopt a particular election under the tax laws, and taxpayer was notified that acting as a consumer would result in the tax consequences it complained of. U.S. Const. Amend. 14; Neb. Rev. Stat. §§ 77-2701.10, 77-2701.16. Diversified Telecom Services, Inc. v. State, 306 Neb. 834, 947 N.W.2d 550 (2020).

[END OF SUPPLEMENT]

Footnotes

1 Conn.—Waterbury Motor Lease, Inc. v. Tax Com'r, 174 Conn. 51, 381 A.2d 552 (1977).
N.M.—Beatty v. City of Santa Fe, 1953-NMSC-110, 57 N.M. 759, 263 P.2d 697 (1953).
Tenn.—Smoky Mountain Canteen Co. v. Kizer, 193 Tenn. 598, 247 S.W.2d 69 (1952).
A.L.R. Library

State or local sales, use, or privilege tax on sales of, or revenues from sales of, advertising space or services, 40 A.L.R.4th 1114.

2 Ark.—Wiseman v. Phillips, 191 Ark. 63, 84 S.W.2d 91 (1935).
Wash.—Morrow v. Henneford, 182 Wash. 625, 47 P.2d 1016 (1935).

3 Ark.—Wiseman v. Phillips, 191 Ark. 63, 84 S.W.2d 91 (1935).
Utah—W.F. Jensen Candy Co. v. State Tax Commission, 90 Utah 359, 61 P.2d 629, 107 A.L.R. 261 (1936).

4 For a general discussion of occupation tax based on amount of sales, see § 1535.

5 Ark.—Wiseman v. Phillips, 191 Ark. 63, 84 S.W.2d 91 (1935).

6 U.S.—Stewart Dry Goods Co. v. Lewis, 294 U.S. 550, 55 S. Ct. 525, 79 L. Ed. 1054 (1935).
Vt.—Great Atlantic & Pacific Tea Co. v. Harvey, 107 Vt. 215, 177 A. 423 (1935).

7 Minn.—Council of Independent Tobacco Manufacturers of America, Carolina Tobacco Co., Winner Tobacco Wholesale, Inc. v. State, 713 N.W.2d 300 (Minn. 2006).
Tax reduction statute
Colo.—Archer Daniels Midland Co. v. State, 690 P.2d 177 (Colo. 1984).

8 Ark.—Bosworth v. Pledger, 305 Ark. 598, 810 S.W.2d 918 (1991).
Ohio—Gen. Motors Corp. v. Tracy, 73 Ohio St. 3d 29, 1995-Ohio-294, 652 N.E.2d 188 (1995), judgment aff'd, 519 U.S. 278, 117 S. Ct. 811, 136 L. Ed. 2d 761 (1997).
Va.—Cox Cable Hampton Roads, Inc. v. City of Norfolk, 247 Va. 64, 439 S.E.2d 366 (1994).
Rational basis test
Minn.—Council of Independent Tobacco Manufacturers of America, Carolina Tobacco Co., Winner Tobacco Wholesale, Inc. v. State, 713 N.W.2d 300 (Minn. 2006).
Wis.—Rashaed v. Wisconsin Dept. of Revenue, 2014 WI App 7, 352 Wis. 2d 527, 842 N.W.2d 487 (Ct. App. 2013).
Direct mail services
N.J.—Fisher-Stevens, Inc. v. Director, Division of Taxation, 121 N.J. Super. 513, 298 A.2d 77 (App. Div. 1972).
Vending machines
Mass.—Seiler Corp. v. Commissioner of Revenue, 384 Mass. 635, 429 N.E.2d 11 (1981).

9 D.C.—Hospitality Temps Corp. v. District of Columbia, 926 A.2d 131 (D.C. 2007).

10 Conn.—Gallacher v. Commissioner of Revenue Services, 221 Conn. 166, 602 A.2d 996 (1992).
Kan.—In re Tax Appeal of Alsop Sand Co., Inc., 265 Kan. 510, 962 P.2d 435 (1998).
Wash.—Sea-Pac Co., Inc. v. State, Dept. of Fisheries, 30 Wash. App. 659, 638 P.2d 92 (Div. 1 1981).
Prior use
Ill.—Philco Corp. v. Department of Revenue, 40 Ill. 2d 312, 239 N.E.2d 805 (1968).
University bookstore
Ariz.—Flagstaff Vending Co. v. City of Flagstaff, 118 Ariz. 556, 578 P.2d 985 (1978).
Exemption from use tax rested on arbitrary basis
U.S.—Williams v. Vermont, 472 U.S. 14, 105 S. Ct. 2465, 86 L. Ed. 2d 11 (1985).
Lack of rational relationship not established
A taxpayer's contention that the sheer number of statutory caps on, and exemptions from, a state sales tax removed any rational relationship they had to the underlying tax was insufficient to establish a violation of equal protection; the taxpayer was required to address the content of the challenged caps and exemptions, not merely their size and volume.
S.C.—Bodman v. State, 403 S.C. 60, 742 S.E.2d 363 (2013).

11 Ga.—Board of Com'rs of Taylor County v. Cooper, 245 Ga. 251, 264 S.E.2d 193 (1980).

12 Ill.—Fiorito v. Jones, 39 Ill. 2d 531, 236 N.E.2d 698 (1968).
Plastic containers
N.Y.—Society of Plastics Industry, Inc. v. City of New York, 68 Misc. 2d 366, 326 N.Y.S.2d 788 (Sup 1971).

13 Mo.—Virden v. Schaffner, 496 S.W.2d 846 (Mo. 1973).
N.Y.—Komp v. State Tax Commission, 56 Misc. 2d 824, 290 N.Y.S.2d 297 (Sup 1968).
N.C.—Piedmont Canteen Service, Inc. v. Johnson, 256 N.C. 155, 123 S.E.2d 582, 91 A.L.R.2d 1127 (1962).

14 Minn.—Associated Food Services, Inc. v. Commissioner of Taxation, 298 Minn. 277, 216 N.W.2d 253 (1974).
N.C.—Fisher v. Jones, 15 N.C. App. 737, 190 S.E.2d 663 (1972).

15 N.M.—Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 1970-NMCA-107, 475 P.2d 779 (Ct. App. 1970).

Privilege tax

Ariz.—Arizona State Tax Commission v. Lawrence Mfg. Co., 15 Ariz. App. 486, 489 P.2d 860 (Div. 2 1971).

Application of equal protection guaranty to licensing taxes, see §§ 1524 to 1540.

16 **Telephone equipment**

Colo.—Western Elec. Co., Inc. v. Weed, 185 Colo. 340, 524 P.2d 1369 (1974).

17 **Prior tax payments**

Cal.—Ladd v. State Bd. of Equalization, 31 Cal. App. 3d 35, 106 Cal. Rptr. 885 (2d Dist. 1973).

18 Fla.—U.S. Steel Corp. v. Dickinson, 272 So. 2d 497 (Fla. 1972).

N.Y.—Amazon.com, LLC v. New York State Dept. of Taxation and Finance, 81 A.D.3d 183, 913 N.Y.S.2d 129 (1st Dep't 2010), judgment aff'd, 20 N.Y.3d 586, 965 N.Y.S.2d 61, 987 N.E.2d 621 (2013), cert. denied, 134 S. Ct. 682, 187 L. Ed. 2d 549 (2013) and cert. denied, 134 S. Ct. 682 (2013).

Ohio—Plowden & Roberts, Inc. v. Porterfield, 21 Ohio St. 2d 276, 50 Ohio Op. 2d 497, 257 N.E.2d 350 (1970).

19 **Collection by nonresident seller**

Miss.—Reichman-Crosby Co. v. Stone, 204 Miss. 122, 37 So. 2d 22 (1948).

Multistate retailers

Cal.—Montgomery Ward & Co. v. State Bd. of Equalization, 272 Cal. App. 2d 728, 78 Cal. Rptr. 373 (1st Dist. 1969).

20 Wis.—Wisconsin Dept. of Revenue v. Moebius Printing Co., 89 Wis. 2d 610, 279 N.W.2d 213 (1979).

21 Ga.—Orkin Exterminating Co. v. Blackmon, 229 Ga. 146, 190 S.E.2d 43 (1972).

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16C C.J.S. Constitutional Law § 1519

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

b. Particular Types of Taxation

§ 1519. Sales and use taxes—Motor or aviation fuel

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3576

A tax on the sale or use of motor or aviation fuel does not deny equal protection of the laws.

A statute which imposes a tax on sales of gasoline or other liquid fuel for use in operating motor vehicles, applying alike to all domestic sales within the state or taxing district,[1] or which imposes a tax on gasoline sold, used, or offered for sale,[2] does not violate the Equal Protection Clause; and neither does a statute taxing gasoline imported and used within the state which can be construed to cover all gasoline whether imported or manufactured within the state even though naphtha imported and blended might escape the tax.[3]

A statute authorizing one county to levy a special tax on gasoline, while denying the right to other counties similarly situated, is invalid.[4] Sales may be taxed and use exempted; and the fact that a sales tax law does not extend to gasoline shipped from other states and consumed within the state does not unconstitutionally discriminate against a local refiner subject to its provisions,[5] but a sales tax law exempting the sale of imported gasoline sold in original packages is discriminatory and invalid.[6] On the

other hand, a statute imposing a tax on gasoline imported into the state and stored for future use is not invalid where there is a similar tax on those buying or producing within the state.[7]

The fact that consumers may obtain a refund of the tax paid on motor vehicle fuel used for some other purpose[8] or that the proceeds of a state tax are allocated among the counties or divided between the state and counties without regard to the amount paid in any particular county[9] does not render a tax act invalid. However, arbitrary apportionment of a county tax would constitute denial of equal protection.[10]

The fact that railroads and barge lines are exempted from a fuel tax while an airline is not does not violate equal protection where the classification is legitimate.[11]

Footnotes

1 U.S.—City of Sedalia, ex rel. and to Use of Bauman v. Standard Oil Co. of Ind., 66 F.2d 757, 95 A.L.R. 1514 (C.C.A. 8th Cir. 1933).
Iowa—Plank v. Grimes, 238 Iowa 594, 28 N.W.2d 34 (1947).
Mich.—Lake Shore Coach Lines v. Alger, 327 Mich. 146, 41 N.W.2d 503 (1950).
City's vehicle fuel tax
Ill.—Illinois Gasoline Dealers Ass'n v. City of Chicago, 119 Ill. 2d 391, 116 Ill. Dec. 555, 519 N.E.2d 447 (1988).
County sales taxes on aviation fuel
Mo.—Shell Oil Co. v. Director of Revenue, 732 S.W.2d 178 (Mo. 1987).

2 Colo.—People v. Texas Co., 85 Colo. 289, 275 P. 896 (1929).
Neb.—State v. Smith, 135 Neb. 423, 281 N.W. 851 (1938).
Distributors, retailers, and storers
Ala.—Woco Pep Co. of Montgomery v. Butler, 225 Ala. 256, 142 So. 509 (1932).

3 U.S.—Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141 (1934).

4 Miss.—Walker v. Board of Supervisors of Monroe County, 224 Miss. 801, 81 So. 2d 225 (1955).

5 U.S.—Hart Refineries v. Harmon, 278 U.S. 499, 49 S. Ct. 188, 73 L. Ed. 475 (1929).

6 Mont.—State v. Sunburst Refining Co., 76 Mont. 472, 248 P. 186, 47 A.L.R. 969 (1926).

7 U.S.—Gregg Dyeing Co. v. Query, 286 U.S. 472, 52 S. Ct. 631, 76 L. Ed. 1232, 84 A.L.R. 831 (1932).

8 U.S.—Monamotor Oil Co. v. Johnson, 292 U.S. 86, 54 S. Ct. 575, 78 L. Ed. 1141 (1934).
Idaho—State ex rel. Anderson v. Rayner, 60 Idaho 706, 96 P.2d 244 (1939).
S.C.—State ex rel. Edwards v. Query, 207 S.C. 500, 37 S.E.2d 241 (1946).

9 Ala.—Jefferson County v. Hard, 227 Ala. 201, 149 So. 81 (1933).

10 Fla.—Carlton v. Mathews, 103 Fla. 301, 137 So. 815 (1931).

11 Ky.—Delta Air Lines, Inc. v. Com., Revenue Cabinet, 689 S.W.2d 14 (Ky. 1985).

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16C C.J.S. Constitutional Law § 1520

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

c. Assessment and Collection

§ 1520. Assessment and collection, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3564

While the mere unequal assessment of property in the same class is not a denial of equal protection, the intentional, systematic omission or undervaluation of such property contravenes the constitutional right.

While the Equal Protection Clause was intended to secure equality and uniformity in the mode and rate of assessment,[1] the states are not precluded from prescribing different methods of assessment for different classes of persons or property[2] so long as the assessment scheme is not without rational foundation.[3] As a general rule, assessment of certain persons or property in a proper manner does not constitute a denial of the equal protection of the laws merely because other persons or property may be subject to assessment at a lower rate than that required by law.[4]

Nevertheless, discrimination in the assessment or valuation by tax officials may result in violation of the equal protection of the laws guaranty[5] provided that the action of the tax officials constitutes more than mere error or mistake in judgment[6] or results in more than inequality in valuation.[7] In order to establish an equal protection violation, it must be shown that the officials

are chargeable with a purpose or design to discriminate by a systematic method.[8] The intentional, systematic omission[9] or undervaluation[10] by state officials of taxable property of the same class belonging to other owners contravenes the constitutional right of one taxed at a higher value or on the full value of his or her property; and the intentional, systematic discrimination by tax officials in arbitrarily excluding the taxpayer from a class to which he or she belongs deprives him or her of equal protection of the law even though the tax law is not subject to constitutional objections.[11] The Equal Protection Clause requires the assessors to recognize differences in value due to location, accessibility, and other factors.[12] Thus, while the systematic overvaluation of a taxpayer's property violates equal protection,[13] it is not necessary for the taxpayer to prove that he or she was overassessed by the taxing officials;[14] the taxpayer may instead show that his or her property was assessed at its true value while other property was intentionally undervalued[15] or that his or her property was assessed at the same level as other properties because the taxing authority intentionally chose to ignore clear differences in value which should have lessened the assessment.[16]

A taxpayer is not deprived of the equal protection of the law by the action of taxing officials in applying a different standard in fixing the value of different classes of property or taxing different classes of property at different percentages of their real value[17] or in increasing or reducing an entire assessment if the original assessment has not been made on a proper basis.[18]

Where sufficient ground for a valid classification exists, there is no denial of equal protection in providing a method of assessment for the property of one owner different from that provided for somewhat similar property of other owners.[19] The State may provide that intangible property shall be assessable for taxation at a particular place,[20] and an assessment of property may be based on population.[21]

It is not an infringement of the Equal Protection Clause for a statute to authorize the assessment of the same classes of property in different districts in different years[22] or the assessment of different classes of property in different years.[23] A taxpayer who is not called on to pay, on the average, on a higher percentage of the actual value of his or her property than are other persons and property may not complain although his or her tangible and intangible property were assessed by two independent boards at different percentages of the actual value.[24]

Equal protection is not denied by reclassifying oil leases as realty rather than personalty, as regards offset of taxes paid thereon against franchise tax,[25] or collecting and retaining a tax paid without protest.[26]

Footnotes

1 U.S.—Garrett v. Bamford, 582 F.2d 810 (3d Cir. 1978).
Mont.—Department of Revenue v. State Tax Appeal Bd., 188 Mont. 244, 613 P.2d 691 (1980).
Vt.—New England Power Co. v. Town of Barnet, 134 Vt. 498, 367 A.2d 1363 (1976).
Rugh equality in tax treatment of similarly situated property owners
D.C.—District of Columbia v. Craig, 930 A.2d 946 (D.C. 2007).

2 U.S.—Charleston Federal Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945).
Conn.—United Illuminating Co. v. City of New Haven, 179 Conn. 627, 427 A.2d 830 (1980).
Ill.—People ex rel. Jones v. Adams, 40 Ill. App. 3d 189, 350 N.E.2d 767 (5th Dist. 1976).
Reduction in assessed value of county-assessed property
Utah—Rio Algom Corp. v. San Juan County, 681 P.2d 184 (Utah 1984).

3 Colo.—Zelinger v. City and County of Denver, 724 P.2d 1356 (Colo. 1986).

4 U.S.—Southern Ry. Co. v. Watts, 260 U.S. 519, 43 S. Ct. 192, 67 L. Ed. 375 (1923).
Cal.—Metropolitan Stevedore Co. v. County of Los Angeles, 29 Cal. App. 3d 565, 105 Cal. Rptr. 595 (2d Dist. 1972).

Fla.—Spooner v. Askew, 345 So. 2d 1055 (Fla. 1976).

5 Ala.—Hamilton v. Adkins, 250 Ala. 557, 35 So. 2d 183 (1948).

Ala.—State v. Murphy, 45 Ala. App. 637, 235 So. 2d 888 (Civ. App. 1970).

La.—Bussie v. Long, 286 So. 2d 689 (La. Ct. App. 1st Cir. 1973), writ refused, 288 So. 2d 354 (La. 1974).

6 U.S.—Charleston Federal Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945).

Ariz.—Maricopa County v. North Central Development Co., 115 Ariz. 540, 566 P.2d 688 (Ct. App. Div. 1 1977).

Md.—State Dept. of Assessments and Taxation v. Greyhound Computer Corp., 271 Md. 575, 320 A.2d 40 (1974).

Errors of judgment and reasonable mistakes

D.C.—District of Columbia v. Craig, 930 A.2d 946 (D.C. 2007).

7 Ala.—Hamilton v. Adkins, 250 Ala. 557, 35 So. 2d 183 (1948).

Or.—Penn Phillips Lands, Inc. v. State Tax Commission, 247 Or. 380, 430 P.2d 349 (1967).

Transitional inequality

W. Va.—Petition of Maple Meadow Min. Co. for Relief from Real Property Assessment for Tax Year 1992, 191 W. Va. 519, 446 S.E.2d 912 (1994).

8 Ariz.—Maricopa County v. North Central Development Co., 115 Ariz. 540, 566 P.2d 688 (Ct. App. Div. 1 1977).

Haw.—In re Hawaiian Land Co., 53 Haw. 45, 487 P.2d 1070 (1971).

N.J.—Baldwin Const. Co. v. Essex County Bd. of Taxation, 16 N.J. 329, 108 A.2d 598 (1954).

Invidious disparities among similarly situated taxpayers

N.Y.—Supreme Associates, LLC v. Suozzi, 34 Misc. 3d 255, 932 N.Y.S.2d 835 (Sup 2011).

Showing reduced assessment or value not sufficient

U.S.—Grand Trunk Western R. Co. v. Brown, 32 F. Supp. 784 (E.D. Mich. 1940).

Burden of proof on complainant

U.S.—Charleston Federal Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945).

9 Ariz.—Maricopa County v. North Central Development Co., 115 Ariz. 540, 566 P.2d 688 (Ct. App. Div. 1 1977).

Fla.—Arundel Corp. v. Sproul, 136 Fla. 167, 186 So. 679 (1939).

10 U.S.—Charleston Federal Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 65 S. Ct. 624, 89 L. Ed. 857 (1945).

Conn.—United Illuminating Co. v. City of New Haven, 179 Conn. 627, 427 A.2d 830 (1980).

D.C.—District of Columbia v. Craig, 930 A.2d 946 (D.C. 2007).

Intentional and systematic undervaluation not found

Mont.—State, Dept. of Revenue v. PPL Montana, LLC, 2007 MT 310, 340 Mont. 124, 172 P.3d 1241 (2007).

W. Va.—Mountain America, LLC v. Huffman, 224 W. Va. 669, 687 S.E.2d 768 (2009).

Discriminatory increase in some assessments but not others

N.J.—Baldwin Const. Co. v. Essex County Bd. of Taxation, 16 N.J. 329, 108 A.2d 598 (1954).

Power of State to equalize not material

U.S.—Iowa-Des Moines Nat. Bank v. Bennett, 284 U.S. 239, 52 S. Ct. 133, 76 L. Ed. 265 (1931).

11 U.S.—Schlosser v. Welsh, 5 F. Supp. 993 (D.S.D. 1934).

12 U.S.—Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County, Pa., 284 U.S. 23, 52 S. Ct. 48, 76 L. Ed. 146 (1931).

U.S.—Phillips Petroleum Co. v. Townsend, 63 F.2d 293 (C.C.A. 5th Cir. 1933).

Classification of agricultural as suburban property

Mont.—Mohland v. State Bd. of Equalization, 155 Mont. 49, 466 P.2d 582 (1970).

13 Iowa—Michigan Wisconsin Pipe Line Co. v. Iowa State Bd. of Tax Review, 368 N.W.2d 187 (Iowa 1985).

14 U.S.—Southland Mall, Inc. v. Garner, 455 F.2d 887 (6th Cir. 1972).

15 U.S.—Southland Mall, Inc. v. Garner, 455 F.2d 887 (6th Cir. 1972).

16 U.S.—Southland Mall, Inc. v. Garner, 455 F.2d 887 (6th Cir. 1972).

17 U.S.—Klein v. Board of Tax Sup'rs of Jefferson County, Ky., 282 U.S. 19, 51 S. Ct. 15, 75 L. Ed. 140, 73 A.L.R. 679 (1930).

Ill.—Application of Korzen, 63 Ill. App. 3d 835, 20 Ill. Dec. 643, 380 N.E.2d 852 (1st Dist. 1978).

S.C.—Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 190 S.E.2d 503 (1972).

Geographical variation

Iowa—Avery v. Peterson, 243 N.W.2d 630 (Iowa 1976).

Use of equalization factor

Mo.—C & D Inv. Co. v. Bestor, 624 S.W.2d 835 (Mo. 1981).

18 Ill.—Budberg v. Sangamon County, 4 Ill. 2d 518, 123 N.E.2d 479 (1954).

19 Cal.—Simms v. Los Angeles County, 35 Cal. 2d 303, 217 P.2d 936 (1950).

Mass.—Assessors of Haverhill v. New England Tel. & Tel. Co., 332 Mass. 357, 124 N.E.2d 917 (1955).

20 Okla.—General Motors Acceptance Corp. v. Hulbert, 1942 OK 78, 190 Okla. 568, 125 P.2d 975 (1942).

21 Iowa—Knudson v. Linstrum, 233 Iowa 709, 8 N.W.2d 495 (1943).

22 Ala.—Hamilton v. Adkins, 250 Ala. 557, 35 So. 2d 183 (1948).

Md.—Rogan v. Calvert County Com'rs, 194 Md. 299, 71 A.2d 47 (1950).

23 Md.—Rogan v. Calvert County Com'rs, 194 Md. 299, 71 A.2d 47 (1950).

24 U.S.—Baker v. Druesedow, 263 U.S. 137, 44 S. Ct. 40, 68 L. Ed. 212 (1923).

25 U.S.—Barnsdall Oil Co. of California v. Merriam, 8 F. Supp. 185 (N.D. Cal. 1934).

26 Ky.—Charlton's Ex'r v. Talbott, 250 Ky. 90, 61 S.W.2d 1086 (1933).

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16C C.J.S. Constitutional Law § 1521

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

c. Assessment and Collection

§ 1521. Reappraisal or reassessment

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3564

To avoid constitutional infirmity under the Equal Protection Clause, a state's process of reappraisal of property for property tax purposes must be part of a uniform statewide appraisal plan and must achieve the seasonable attainment of equality in the tax treatment of similarly situated property owners.

Just as the Equal Protection Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes, it does not require an immediate general adjustment on the basis of latest market developments.[1] However, to avoid constitutional infirmity under the Equal Protection Clause, a state's process of reappraisal of property for property tax purposes must be part of a uniform statewide appraisal plan[2] and must achieve the seasonable attainment of equality in the tax treatment of similarly situated property owners.[3]

A state's "acquisition value" system of taxation, whereby property is reassessed up to the current appraised value upon new construction or a change in ownership, does not violate equal protection.[4] Reassessment of property tax upon improvement

of the property is not illegal in and of itself, nor is the use of the purchase price or the current market value to reach a tax assessment in and of itself a violation of equal protection so long as the implicit policy is applied even-handedly to all similarly situated property.[5]

In the absence of intentional and systematic discrimination, constructive fraud, or arbitrary action, the placing of revaluations on the tax rolls annually and sequentially as the appraisals are completed does not violate equal protection,[6] but the implementation of a cyclical reappraisal plan which results in intentional discrimination, arbitrary action, or grossly and relatively unfair assessments violates equal protection.[7]

It is unconstitutional for a municipality to reassess real property selectively without a rational basis, and an equal protection violation will be found when the assessing body isolates a particular property for reassessment and is unable to justify the changes with some legally recognized factor such as improvements to the property or equal application to all properties of similar character.[8]

Footnotes

1 U.S.—Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va., 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).

2 U.S.—Allegheny Pittsburgh Coal Co. v. County Com'n of Webster County, W. Va., 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).
Mont.—Powder River County v. State, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).

3 Mont.—Powder River County v. State, 2002 MT 259, 312 Mont. 198, 60 P.3d 357 (2002).

4 U.S.—Nordlinger v. Hahn, 505 U.S. 1, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992).

5 N.Y.—Carroll v. Assessor of City of Rye, 123 A.D.3d 924, 999 N.Y.S.2d 155 (2d Dep't 2014).

6 Idaho—Justus v. Board of Equalization of Kootenai County, 101 Idaho 743, 620 P.2d 777 (1980).
Nev.—Recanzone v. Nevada Tax Commission, 92 Nev. 302, 550 P.2d 401 (1976).
Okla.—Melvin v. Dunn, 1980 OK 29, 607 P.2d 694 (Okla. 1980).

7 N.M.—Ernest W. Hahn, Inc. v. County Assessor for Bernalillo County, 1978-NMSC-094, 92 N.M. 609, 592 P.2d 965 (1978).
Wash.—Dore v. Kinnear, 79 Wash. 2d 755, 489 P.2d 898 (1971).

8 N.Y.—Harris Bay Yacht Club, Inc. v. Town of Queensbury, 68 A.D.3d 1374, 891 N.Y.S.2d 210 (3d Dep't 2009).
Selective reassessment not found
A city real property tax assessor's reassessment of a taxpayer's property was not a selective reassessment of the property, as would violate the equal protection provisions of the state and federal constitutions, absent evidence that the city assessed newly constructed property at a higher percentage of market value than existing property.
N.Y.—Carroll v. Assessor of City of Rye, 123 A.D.3d 924, 999 N.Y.S.2d 155 (2d Dep't 2014).

16C C.J.S. Constitutional Law § 1522

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

c. Assessment and Collection

§ 1522. Enforcement

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3564

The courts have adjudicated equal protection challenges to various aspects of governmental tax enforcement schemes, such as assessments of penalties and interest.

Penalty assessments based on the negligent failure to pay taxes when due do not deny equal protection.[1] Moreover, the use of coercive methods to collect from delinquent taxpayers in an unlawful business, whereas such force is not necessary to secure payment by others, is not discrimination against such delinquents.[2] A taxpayer is not denied equal protection by the action of taxing officials in assessing interest on back taxes as required by statute.[3] The imposition of a different rate of interest on a deficiency excise tax assessment made after particular date pursuant to a regulation changing the rate does not deny equal protection even though the same taxable period is involved.[4]

In the absence of intentional or purposeful discrimination, mere laxity in enforcement of a tax does not constitute a denial of equal protection.[5] Similarly, equal protection is not denied by failing, in foreclosing tax certificates, to proceed against all persons against whom the proceedings might be invoked.[6]

Footnotes

1 **Use of accountant**
N.M.—Gathings v. Bureau of Revenue, 87 N.M. 334, 1975-NMCA-016, 533 P.2d 107 (Ct. App. 1975).

2 Miss.—Bishop v. Bailey, 209 Miss. 892, 48 So. 2d 588 (1950).

3 Wis.—State ex rel. Berger v. Cary, 192 Wis. 433, 211 N.W. 284 (1926).

4 Tenn.—Genesco, Inc. v. Woods, 578 S.W.2d 639 (Tenn. 1979).

5 Ill.—Kerasotes Rialto Theater Corp. v. City of Peoria, 77 Ill. 2d 491, 34 Ill. Dec. 118, 397 N.E.2d 790 (1979).

6 Fla.—Beebe v. State, for Use and Benefit of State, 113 Fla. 28, 151 So. 298 (1933).

16C C.J.S. Constitutional Law § 1523

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

1. Taxation

c. Assessment and Collection

§ 1523. Remedies for incorrect assessments

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3564

Subject to the requirements of equal protection, the states are not precluded from prescribing different remedies for excessive assessments.

The fact that in many individual cases appeals are taken by a city from a reduction of assessments by county tax authorities and might require assessment changes does not impugn the integrity of the assessing action,[1] and the prosecution of appeals involving only certain classes of property is not invalid.[2] A curative act may legalize erroneous computations of the tax rate by the tax officials.[3]

The states are not precluded from prescribing different remedies for excessive assessments.[4] There is no denial of equal protection in granting an appeal to a person aggrieved by a tax official's refusal of an abatement without granting any corresponding appeal to the assessor,[5] and where a statute provides for notice to a claimed delinquent with opportunity to

be heard before the assessment becomes final, the statute is not invalid because it does not provide for a hearing before the assessment.[6]

A person is not denied equal protection by a discrimination in the valuation of his or her property if a remedy, of which he or she has not availed himself or herself, is provided by state legislation for the correction of the grievance,[7] and the same result applies where those who protest an assessment are given a greater reduction therein than taxpayers who do not follow the protest procedure.[8] On the other hand, where a taxpayer who has been singled out for discriminatory taxation may not obtain equalization by a reduction of his or her own assessment but is restricted to proceeding against other members of his class for the purpose of having their taxes increased, such remedy is not adequate to protect his or her rights.[9]

A statute requiring errors and omissions involving an assessor's exercise of judgment in determining the base year value of real property to be corrected within four years gives taxpayers a reasonable time to discover latent problems or encumbrances on the property and thus does not violate taxpayers' constitutional guarantee of equal protection.[10]

Statutory provisions which create significant differences between taxpayer classifications, in allowing municipalities to deny their citizens access to de novo review of municipal property tax assessments, but allowing judicial review for all other taxpayers, lack a rational basis and therefore violate equal protection where the alleged statutory objectives to create a more efficient assessment review procedure bear no relation to the new classification, which simply delegate the choice to implement the opt-out provisions to each individual municipality, and where the characteristics of all taxpayers are identical.[11]

Footnotes

1 N.J.—Hudson & M.R. Co. v. Jersey City, 6 N.J. Super. 333, 71 A.2d 220 (App. Div. 1950), judgment aff'd, 5 N.J. 434, 75 A.2d 923 (1950).

2 N.J.—Hudson & M.R. Co. v. Jersey City, 6 N.J. Super. 333, 71 A.2d 220 (App. Div. 1950), judgment aff'd, 5 N.J. 434, 75 A.2d 923 (1950).

3 Iowa—Cook v. Dewey, 233 Iowa 516, 10 N.W.2d 8 (1943).

Failure to deduct tax and refunds

Iowa—Cook v. Hannah, 230 Iowa 249, 297 N.W. 262 (1941).

4 U.S.—Callaway v. Bohler, 291 F. 243 (S.D. Ga. 1923), aff'd, 267 U.S. 479, 45 S. Ct. 431, 69 L. Ed. 745 (1925).

Ga.—Hancock v. Board of Tax Assessors of Harris County, 226 Ga. 570, 176 S.E.2d 102 (1970).

Ill.—Korzen v. Commercial Stamping & Forging, Inc., 42 Ill. App. 3d 895, 1 Ill. Dec. 562, 356 N.E.2d 844 (1st Dist. 1976).

Abatement to municipal average

Mass.—Keniston v. Board of Assessors of Boston, 380 Mass. 888, 407 N.E.2d 1275 (1980).

Assessment appeals only for owners of certain classes of property

D.C.—Hessey v. Burden, 615 A.2d 562 (D.C. 1992).

Claims under and over specified amount

Wash.—State ex rel. Northern Pac. Ry. Co. v. Henneford, 3 Wash. 2d 48, 99 P.2d 616 (1940).

W. Va.—Bookman v. Hampshire County Com'n, 193 W. Va. 255, 455 S.E.2d 814 (1995).

Remedy lacked rational basis

A statute allowing circuit court action to recover a property tax based on an excessive assessment in a county with a population of less than 500,000, but permitting only certiorari review of assessments in larger counties, lacks a rational basis and violates the state and federal equal protection clauses.

Wis.—Nankin v. Village of Shorewood, 2001 WI 92, 245 Wis. 2d 86, 630 N.W.2d 141 (2001).

5 Mass.—Assessors of Haverhill v. New England Tel. & Tel. Co., 332 Mass. 357, 124 N.E.2d 917 (1955).

6 Ga.—Hardin v. Reynolds, 189 Ga. 534, 6 S.E.2d 328 (1939).

7 Iowa—Younker Bros. v. Zirbel, 234 Iowa 269, 12 N.W.2d 219, 151 A.L.R. 242 (1943).

N.J.—Hackensack Water Co. v. State Bd. of Taxes and Assessment, 104 N.J.L. 48, 139 A. 410 (N.J. Sup. Ct. 1927).

Ohio—Rollman & Sons Co. v. Board of Revision of Hamilton County, 163 Ohio St. 363, 56 Ohio Op. 337, 127 N.E.2d 1 (1955).

Reduction in assessment

Reducing assessment of taxpayer's property, which was assessed in excess of property's market value in violation of statute, would not violate Equal Protection Clause of United States Constitution or uniformity clause of state constitution even though most taxpayers were assessed above market value, and thus taxpayer would pay less taxes than other taxpayers with similarly valued properties as other taxpayers' failure to exercise their rights could not be defense to granting relief to taxpayer who exercised his rights.

Minn.—Kuiters v. County of Freeborn, 430 N.W.2d 461 (Minn. 1988).

8 Md.—State Dept. of Assessments and Taxation v. Clark, 281 Md. 385, 380 A.2d 28 (1977).

9 U.S.—Hillsborough Tp., Somerset County, N.J., v. Cromwell, 326 U.S. 620, 66 S. Ct. 445, 90 L. Ed. 358 (1946).

10 Cal.—Kuperman v. Assessment Appeals Bd. No. 1, 137 Cal. App. 4th 918, 40 Cal. Rptr. 3d 703 (4th Dist. 2006).

11 Wis.—Metropolitan Associates v. City of Milwaukee, 2011 WI 20, 332 Wis. 2d 85, 796 N.W.2d 717 (2011).

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16C C.J.S. Constitutional Law § 1524

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

a. In General

§ 1524. Validity of statutes regulating licensing and license or occupational taxes, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3580, 3682 to 3703

The constitutionality of a statute regulating occupational licensing is properly determined, as against an equal protection challenge, under a rational basis test.

The constitutionality of a statute regulating occupational licensing is properly determined, as against an equal protection challenge, under a rational basis test,[1] pursuant to which a classification must be upheld if it rationally furthers a legitimate state purpose or interest, regardless of whether it reflects perfect logical consistency.[2] In this context, a state legislature has a legitimate and substantial interest in prescribing reasonable qualifications for occupations requiring special knowledge or skill and affecting the public health, safety, and welfare.[3] However, acts or ordinances which authorize administrative officers or boards arbitrarily to grant or refuse licenses,[4] or to revoke or refuse to revoke them,[5] are void as a denial of equal protection.

The equal protection of the laws must be observed in the imposition of license or occupational taxes,[6] but all that is required of a statute levying license fees is that they be uniform, fair, and equitable,[7] bearing alike on all persons and subjects embraced

in the same class and in similar circumstances.[8] Nevertheless, a state may exercise a wide discretion in selecting the subjects of taxation as respects occupation taxes.[9] The fact that the tax is imposed on an unprofitable business or occupation,[10] or that the tax will diminish the licensee's profits,[11] or that it is oppressive or excessive,[12] does not make its imposition a denial of equal protection; nor is a license or privilege tax unlawfully discriminatory because similar privileges are not similarly taxed in other states.[13]

In the absence of a showing of an arbitrary and intentional, unfair discrimination, failure to enforce a licensing tax statute or ordinance against others does not deny to one against whom it is enforced the equal protection of the laws,[14] particularly where the state law affords a remedy by mandamus.[15]

A city is not required to abstain from taxing a private business merely because in the public interest the municipality conducts a like business.[16]

Footnotes

1 Nev.—State, Private Investigator's Licensing Bd. v. Taketa, 105 Nev. 4, 767 P.2d 875 (1989).
Court rule allowing admission on motion for certain attorneys
U.S.—National Ass'n for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037 (9th Cir. 2014), petition for certiorari filed, 83 U.S.L.W. 3764 (U.S. Mar. 19, 2015).

2 Nev.—State, Private Investigator's Licensing Bd. v. Taketa, 105 Nev. 4, 767 P.2d 875 (1989).
Conventional "rational relationship" test
Cal.—Chan v. Judicial Council of California, 199 Cal. App. 4th 194, 131 Cal. Rptr. 3d 32 (2d Dist. 2011).

3 Wyo.—Allhusen v. State By and Through Wyoming Mental Health Professions Licensing Bd., 898 P.2d 878 (Wyo. 1995).

4 La.—State v. Chisesi, 187 La. 675, 175 So. 453 (1937).
Ohio—American Cancer Soc. v. City of Dayton, 94 Ohio App. 131, 50 Ohio Op. 218, 110 N.E.2d 605 (2d Dist. Montgomery County 1952), judgment aff'd, 160 Ohio St. 114, 51 Ohio Op. 32, 114 N.E.2d 219 (1953).
Vt.—Village of St. Johnsbury v. Aron, 103 Vt. 22, 151 A. 650 (1930).
Refusal of license to maintain monopoly
Va.—Vaughan v. State Bd. of Embalmers and Funeral Directors, 196 Va. 141, 82 S.E.2d 618 (1954).
License denial not arbitrary
Ala.—Ensley Seafood Five Points, LLC v. City of Birmingham, 98 So. 3d 1149 (Ala. Civ. App. 2012).

5 Ala.—Lee v. Renfro, 257 Ala. 679, 60 So. 2d 849 (1952).
Wash.—Vincent v. City of Seattle, 115 Wash. 475, 197 P. 618 (1921).

6 U.S.—Schware v. Board of Bar Exam. of State of N.M., 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796, 64 A.L.R.2d 288 (1957).
Alaska—Katmailand, Inc. v. Lake and Peninsula Borough, 904 P.2d 397 (Alaska 1995).
Ga.—Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326 (2013).
Proration of occupation tax
Ark.—Howard v. City of Fort Smith, 311 Ark. 505, 845 S.W.2d 497 (1993).

7 U.S.—Aero-Mayflower Transit Co. v. Watson, 5 F. Supp. 1009 (E.D. Ark. 1934).
Ala.—City of Birmingham v. Stacy Williams Co., Inc., 356 So. 2d 608 (Ala. 1978).
Prohibition of business precluded
Ala.—Bessemer Theatres v. City of Bessemer, 261 Ala. 632, 75 So. 2d 651 (1954).

8 U.S.—Oliver Iron Min. Co. v. Lord, 262 U.S. 172, 43 S. Ct. 526, 67 L. Ed. 929 (1923) (disapproved of on other grounds by, Commonwealth Edison Co. v. Montana, 453 U.S. 609, 101 S. Ct. 2946, 69 L. Ed. 2d 884 (1981)).
Ala.—City of Birmingham v. Stacy Williams Co., Inc., 356 So. 2d 608 (Ala. 1978).
Cal.—Web Service Co. v. Spencer, 252 Cal. App. 2d 827, 61 Cal. Rptr. 493 (4th Dist. 1967).

Ind.—Indiana Aeronautics Commission v. Ambassadair, Inc., 267 Ind. 137, 368 N.E.2d 1340 (1977).

Members and nonmembers charged differently for required tests

Md.—Portsmouth Stove & Range Co. v. City of Baltimore, 156 Md. 244, 144 A. 357 (1929).

Resulting disparity not determinative

Colo.—Tom's Tavern, Inc. v. City of Boulder, 186 Colo. 321, 526 P.2d 1328 (1974).

9 Ala.—Jefferson County v. Richards, 805 So. 2d 690 (Ala. 2001).

10 Ga.—Interstate Co. v. Richardson, 177 Ga. 9, 169 S.E. 373 (1933).

11 Or.—City of Portland v. Portland Ry., Light & Power Co., 80 Or. 271, 156 P. 1058 (1916).

12 Ark.—U-Drive-Em Corp. v. Wiseman, 189 Ark. 1163, 76 S.W.2d 960 (1934).

Ky.—Commonwealth for Use and Ben. of City of Wilmore v. McCray, 250 Ky. 182, 61 S.W.2d 1043 (1933).

Requiring payment in advance

Statute imposing state and county occupation tax and requiring payment of all taxes a year in advance is not invalid.

U.S.—Giozza v. Tiernan, 148 U.S. 657, 13 S. Ct. 721, 37 L. Ed. 599 (1893).

13 U.S.—J. & A. Freiberg Co. v. Dawson, 274 F. 420 (W.D. Ky. 1920), aff'd, 255 U.S. 288, 41 S. Ct. 272, 65 L. Ed. 638 (1921).

14 U.S.—Mackay Telegraph & Cable Co. v. City of Little Rock, 250 U.S. 94, 39 S. Ct. 428, 63 L. Ed. 863 (1919).

Ga.—Grandpa's Store, Inc. v. City of Norcross, 247 Ga. 350, 275 S.E.2d 59 (1981).

N.H.—Northern New England Telephone Operations, LLC v. City of Concord, 166 N.H. 653, 102 A.3d 1190 (2014).

Suspension of license without action

Mass.—Morley v. Wilson, 261 Mass. 269, 159 N.E. 41 (1927).

15 U.S.—Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

16 U.S.—Puget Sound Power & Light Co. v. City of Seattle, Wash., 291 U.S. 619, 54 S. Ct. 542, 78 L. Ed. 1025 (1934).

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16C C.J.S. Constitutional Law § 1525

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K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

a. In General

§ 1525. Classification of trades, occupations, professions, and privileges

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3580, 3682 to 3703

Classification of trades, occupations, professions, and privileges may be made for license purposes, and the different classes may be differently taxed if the classification is reasonable.

Trades, occupations, professions, and privileges may be classified for purposes of license or occupation taxes, and different licenses or taxes may be imposed on the various classes provided the classification is reasonable[1] and defined with fair certainty.[2] General classes may be subdivided into particular classes,[3] and while a license tax on any person, firm, association, partnership, or corporation engaged in any business, occupation, or profession in a city not covered by a specific license tax has been struck down on equal protection grounds,[4] there is also authority that a general tax may be made applicable to all occupations.[5] On the other hand, in the interest of the public, particular occupations or classes of business or activities may be licensed or taxed and other occupations or businesses or activities be entirely exempt therefrom.[6]

The State may exercise a wide discretion in this respect,[7] and the mere fact that discrimination is made does not necessarily vitiate the classification.[8] Unless there can be no substantial basis for the discrimination,[9] or the act is so arbitrary as not to be an exercise of the taxing power at all,[10] the courts will not interfere. Those who are within the classification may not be heard to complain that the statute may tax others who are not within the class.[11]

The classification, in order to be legal, need not approximate perfection,[12] or be scientifically exact,[13] or follow any particular form of words;[14] however, it must not be palpably arbitrary,[15] capricious,[16] fanciful,[17] or unnatural.[18] Classifications for licensing or tax purposes must, to avoid denying equal protection, be based only on existing circumstances, and on substantial distinctions which make one class really different from another, so that the propriety of substantially different legislation is reasonably suggested.[19] Discrimination between classes must be reasonably related to the object of the tax or licensing law[20] and must rest on some reasonable ground of difference which has some relation to the business or occupation;[21] it must not be a mere difference in the persons placed in the respective classes or subclasses, which is entirely foreign to the business.[22]

Differences in organization, management, and type of business transacted are sometimes sufficient to justify the classification,[23] but acts or ordinances which arbitrarily impose different rates of taxation or different terms and conditions on different occupations or privileges, without any reasonable basis for such distinctions[24] or which are unreasonably discriminatory, confiscatory, or are used as subterfuge to eliminate competition,[25] are void as a denial of equal protection of the laws. Where the objects on which an excise tax is imposed are classified, if the classification is arbitrary or amount of tax is such that it impairs one's right to engage in a lawful business or unduly hampers the owner in pursuit of his business, or tends to drive large numbers out of business, it will be stricken down.[26]

Footnotes

1 U.S.—Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).
Ariz.—J. C. Penney Co., Inc. v. Arizona Dept. of Revenue, 125 Ariz. 469, 610 P.2d 471 (Ct. App. Div. 1 1980).
States not inflexibly bound
Colo.—Tom's Tavern, Inc. v. City of Boulder, 186 Colo. 321, 526 P.2d 1328 (1974).

2 Cal.—Barker Bros. v. City of Los Angeles, 10 Cal. 2d 603, 76 P.2d 97 (1938).

3 Cal.—City of Stockton v. West Coast Theatres, Inc. of Northern California, 36 Cal. 2d 879, 222 P.2d 886 (1950).
Md.—Yarger v. State, 175 Md. 220, 200 A. 731 (1938).
Tex.—Hurt v. Cooper, 130 Tex. 433, 110 S.W.2d 896 (1937).

4 **Irrational, capricious, and grossly unjust classification**
Va.—Williams v. City of Richmond, 177 Va. 477, 14 S.E.2d 287, 134 A.L.R. 833 (1941).

5 **Gross receipts tax**
S.D.—State ex rel. Botkin v. Welsh, 61 S.D. 593, 251 N.W. 189 (1933).

6 U.S.—Hart Refineries v. Harmon, 278 U.S. 499, 49 S. Ct. 188, 73 L. Ed. 475 (1929).
Md.—Aero Motors, Inc. v. Administrator, Motor Vehicle Administration, 274 Md. 567, 337 A.2d 685 (1975).
N.Y.—Koner v. Procaccino, 45 A.D.2d 551, 360 N.Y.S.2d 323 (3d Dep't 1974), order aff'd, 39 N.Y.2d 258, 383 N.Y.S.2d 295, 347 N.E.2d 658 (1976).

7 U.S.—New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).
Ga.—Lake Lanier Theatres v. Hall County, 229 Ga. 54, 189 S.E.2d 439 (1972).
Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).

8 Tex.—Dodgen v. Depuglio, 146 Tex. 538, 209 S.W.2d 588 (1948).

9 Idaho—J.C. Penney Co. v. Diefendorf, 54 Idaho 374, 32 P.2d 784 (1934).
La.—Matthews v. Conway, 179 La. 875, 155 So. 255 (1934).
Tex.—Dodgen v. Depuglio, 146 Tex. 538, 209 S.W.2d 588 (1948).
No rational basis for difference in treatment
U.S.—Moore-King v. County of Chesterfield, Va., 708 F.3d 560 (4th Cir. 2013).

10 Ala.—Bessemer Theatres v. City of Bessemer, 261 Ala. 632, 75 So. 2d 651 (1954).

11 U.S.—Clark v. Paul Gray, Inc., 306 U.S. 583, 59 S. Ct. 744, 83 L. Ed. 1001 (1939).

12 U.S.—Morf v. Ingels, 14 F. Supp. 922 (S.D. Cal. 1936), aff'd, 300 U.S. 290, 57 S. Ct. 439, 81 L. Ed. 653 (1937).

13 U.S.—Ohio Oil Co. v. Conway, 34 F.2d 47 (E.D. La. 1929), aff'd, 281 U.S. 146, 50 S. Ct. 310, 74 L. Ed. 775 (1930).
Alaska—K & L Distributors, Inc. v. Murkowski, 486 P.2d 351 (Alaska 1971).

14 U.S.—Clark v. Paul Gray, Inc., 306 U.S. 583, 59 S. Ct. 744, 83 L. Ed. 1001 (1939).

15 U.S.—Brown-Forman Co. v. Commonwealth of Kentucky, 217 U.S. 563, 30 S. Ct. 578, 54 L. Ed. 883 (1910).
Va.—Williams v. City of Richmond, 177 Va. 477, 14 S.E.2d 287, 134 A.L.R. 833 (1941).
Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).
Classification not arbitrary
U.S.—Heller v. Ross, 682 F. Supp. 2d 797 (E.D. Mich. 2010).
Ohio—Stowers v. Ohio Dept. of Agriculture, 2011-Ohio-2710, 2011 WL 2176512 (Ohio Ct. App. 9th Dist. Lorain County 2011).

16 U.S.—Brown-Forman Co. v. Commonwealth of Kentucky, 217 U.S. 563, 30 S. Ct. 578, 54 L. Ed. 883 (1910).
Va.—Williams v. City of Richmond, 177 Va. 477, 14 S.E.2d 287, 134 A.L.R. 833 (1941).
Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).

17 La.—Southland Corp. v. Collector of Revenue for Louisiana, 321 So. 2d 501 (La. 1975).

18 La.—Southland Corp. v. Collector of Revenue for Louisiana, 321 So. 2d 501 (La. 1975).

19 Wis.—State ex rel. Wisconsin Real Estate Brokers' Bd. v. Gerhardt, 39 Wis. 2d 701, 159 N.W.2d 622 (1968).

20 U.S.—Hawaii Boating Ass'n v. Water Transp. Facilities Division, Dept. of Transp., State of Hawaii, 651 F.2d 661 (9th Cir. 1981).
Nev.—State v. Glusman, 98 Nev. 412, 651 P.2d 639 (1982).
Different classification for different tax purposes
Wash.—Commonwealth Title Ins. Co. v. City of Tacoma, 81 Wash. 2d 391, 502 P.2d 1024 (1972).

21 Cal.—City of Stockton v. West Coast Theatres, Inc. of Northern California, 36 Cal. 2d 879, 222 P.2d 886 (1950).
Wash.—Chesapeake & Potomac Tel. Co. v. City of Morgantown, 143 W. Va. 800, 105 S.E.2d 260 (1958).
Partnerships
Tenn.—Corn v. Fort, 170 Tenn. 377, 95 S.W.2d 620, 106 A.L.R. 647 (1936).
Factors considered
Differences in excise taxes must be based on differences in the cost of police protection, modes of conducting the business, the burden imposed on the governmental entity in enforcing the laws, or on some other just and reasonable basis.
Fla.—State ex rel. James v. Gerrell, 137 Fla. 324, 188 So. 812 (1938).

22 Wash.—McKnight v. Hodge, 55 Wash. 289, 104 P. 504 (1909).
Discrimination against nonresidents, generally, see § 1529.

23 Ky.—Williams v. City of Bowling Green, 254 Ky. 11, 70 S.W.2d 967 (1934).
S.C.—U.S. Fidelity & Guaranty Co. v. City of Newberry, 257 S.C. 433, 186 S.E.2d 239 (1972).
Tex.—Hurt v. Cooper, 130 Tex. 433, 110 S.W.2d 896 (1937).

24 U.S.—State of Fla. v. Mathews, 526 F.2d 319 (5th Cir. 1976).
Cal.—D'Amico v. Board of Medical Examiners, 11 Cal. 3d 1, 112 Cal. Rptr. 786, 520 P.2d 10 (1974).
Tex.—Prudential Health Care Plan, Inc. v. Commissioner of Ins., 626 S.W.2d 822 (Tex. App. Austin 1981), writ refused n.r.e., (Apr. 7, 1982).
Invidious discrimination
U.S.—Stephens v. Dennis, 293 F. Supp. 589 (N.D. Ala. 1968).
Unreasonable subclassification

Va.—City of Norfolk v. Griffin Bros., 120 Va. 524, 91 S.E. 640 (1917).

25 Cal.—Web Service Co. v. Spencer, 252 Cal. App. 2d 827, 61 Cal. Rptr. 493 (4th Dist. 1967).

26 Fla.—State ex rel. James v. Gerrell, 137 Fla. 324, 188 So. 812 (1938).

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16C C.J.S. Constitutional Law § 1526

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

a. In General

§ 1526. Occupations and privileges of same class

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3580, 3682 to 3703

Occupation or license taxes must fall alike on all persons similarly situated, but for purposes of exemption or different taxation, persons engaged in the same business or avocation may be reasonably subclassified.

A license tax which makes an arbitrary distinction between persons similarly situated and does not fall alike on all persons engaged in the same particular class of business or avocation is unconstitutional[1] as where it arbitrarily and unreasonably exempts part of a class,[2] or applies only to businesses established after the effective date of the statute,[3] or attempts to distinguish between persons engaged in the same or like businesses merely on the basis of the length of time each has been engaged in the business,[4] or arbitrarily and unreasonably discriminates between different modes of conducting the same business,[5] unless there is something in the one mode which makes it more dangerous to the public.[6]

On the other hand, a license or occupation tax is valid for purposes of the Equal Protection Clause if it applies equally and without discrimination to all persons engaged in the same particular business or avocation, or exercising the same privileges,[7]

or if the occupations or privileges and the persons engaged therein are classified for taxation according to reasonable and well recognized lines of distinction,[8] or the classifications are reasonably related to a legitimate governmental purpose,[9] and it does not matter how few the persons are who may be included in a class as long as all who are or may come into the like situation or circumstances are embraced in the class.[10]

Persons engaged in the same business or avocation may be subclassified for the purpose of exempting or imposing different rates of occupation taxes,[11] for example, as persons who actually perform the manual labor involved in their trade and those who merely employ others to do so.[12] For the purpose of requiring licenses or imposing different rates of taxation, businesses may be classified according to the different articles manufactured,[13] transported,[14] or sold.[15]

Previous military service.

Statutes discriminating in favor of persons who have engaged in previous military service, exempting them from the payment of a license tax which is required of others in the same business, have been held to be unconstitutional as denying equal protection of the law,[16] but there is also authority to the contrary,[17] and a discrimination in favor of former soldiers and sailors with respect to an occupation which may be pursued only by consent of the sovereign state has been said not to violate the guaranty of equal protection, particularly where the legislature has a reasonable basis for believing that such individuals are more fit than others to engage in the occupation.[18]

Footnotes

1 U.S.—Martin v. Conlisk, 347 F. Supp. 262 (N.D. Ill. 1972).
S.C.—Southern Bell Tel. and Tel. Co. v. City of Spartanburg, 285 S.C. 495, 331 S.E.2d 333 (1985).
Employees
Ill.—Frazer v. Shelton, 320 Ill. 253, 150 N.E. 696, 43 A.L.R. 1086 (1926).

2 U.S.—Chickasha Cotton Oil Co. v. Cotton County Gin Co., 40 F.2d 846, 74 A.L.R. 1070 (C.C.A. 10th Cir. 1930).
Del.—Bryson v. Board of Funeral Service Practitioners of State, 402 A.2d 398 (Del. Super. Ct. 1979).
N.C.—Heritage Village Church and Missionary Fellowship, Inc. v. State, 40 N.C. App. 429, 253 S.E.2d 473 (1979), judgment aff'd, 299 N.C. 399, 263 S.E.2d 726 (1980).
Natural persons
Tex.—H. Rouw Co. v. Texas Citrus Commission, 151 Tex. 182, 247 S.W.2d 231 (1952).

3 Wis.—State ex rel. F.W. Woolworth Co. v. State Board of Health, 237 Wis. 638, 298 N.W. 183, 136 A.L.R. 205 (1941).

4 Cal.—Accounting Corp. of America v. State Board of Account Ing., 34 Cal. 2d 186, 208 P.2d 984 (1949).
Fla.—State ex rel. James v. Gerrell, 137 Fla. 324, 188 So. 812 (1938).

5 Ala.—Rochell v. City of Florence, 237 Ala. 635, 188 So. 247 (1939).
Cal.—Barker Bros. v. City of Los Angeles, 10 Cal. 2d 603, 76 P.2d 97 (1938).
Ohio—State v. Smith, 48 Ohio Op. 310, 63 Ohio L. Abs. 452, 108 N.E.2d 582 (Mun. Ct. 1952).

6 Ariz.—City of Tempe v. Baseball Facilities, Inc., 23 Ariz. App. 557, 534 P.2d 1056 (Div. 1 1975).

7 U.S.—Utah Power & Light Co. v. Pfost, 52 F.2d 226 (D. Idaho 1931).
Mo.—Riden v. City of Rolla, 348 S.W.2d 946 (Mo. 1961).
Va.—Chesapeake & Potomac Tel. Co. of Va. v. City of Newport News, 196 Va. 627, 85 S.E.2d 345 (1955).
Wash.—State v. Inland Empire Refineries, 3 Wash. 2d 651, 101 P.2d 975 (1940).
Alternative methods of computation permissible
Cal.—Web Service Co. v. Spencer, 252 Cal. App. 2d 827, 61 Cal. Rptr. 493 (4th Dist. 1967).

8 U.S.—State Board of Tax Com'rs of Ind. v. Jackson, 283 U.S. 527, 51 S. Ct. 540, 75 L. Ed. 1248, 73 A.L.R. 1464, 75 A.L.R. 1536 (1931); MacDonald v. Board of Com'rs of Pilots of State of N. Y., 523 F. Supp. 949 (S.D. N.Y. 1981).

Cal.—City of Stockton v. West Coast Theatres, Inc. of Northern California, 36 Cal. 2d 879, 222 P.2d 886 (1950).

9 Ala.—Jefferson County v. Richards, 805 So. 2d 690 (Ala. 2001).

S.C.—Eli Witt Co. v. City of West Columbia, 309 S.C. 555, 425 S.E.2d 16 (1992).

10 U.S.—Barrett v. City of New York, 183 F. 793 (C.C.S.D. N.Y. 1910).

Va.—Chesapeake & Potomac Tel. Co. of Va. v. City of Newport News, 196 Va. 627, 85 S.E.2d 345 (1955).

11 Ky.—City of Louisville v. Coulter, 177 Ky. 242, 197 S.W. 819 (1917).

La.—State v. Carl The Cleaner, 185 La. 1083, 171 So. 453 (1936).

Essentially different methods of conducting same business

Cal.—Web Service Co. v. Spencer, 252 Cal. App. 2d 827, 61 Cal. Rptr. 493 (4th Dist. 1967).

12 U.S.—White Cleaners & Dyers v. Hughes, 7 F. Supp. 1017 (W.D. La. 1934).

La.—State v. Banner Cleaners & Dyers, 184 La. 997, 168 So. 127 (1936).

For further discussion of the classification of particular occupations, trades, businesses, and professions, see §§ 1533 to 1540.

13 Miss.—Southern Package Corporation v. State Tax Commission, 174 Miss. 212, 164 So. 45 (1935).

14 Md.—Yarger v. State, 175 Md. 220, 200 A. 731 (1938).

Effect of Equal Protection Clause on statute imposing tax on motor carriers, generally, see § 1538.

Lobsters

Me.—State v. Dodge, 117 Me. 269, 104 A. 5 (1918).

15 § 1535.

16 Ill.—Marallis v. City of Chicago, 349 Ill. 422, 182 N.E. 394, 83 A.L.R. 1222 (1932).

Ind.—Hanley v. State, 234 Ind. 326, 123 N.E.2d 452 (1954).

17 U.S.—White Cleaners & Dyers v. Hughes, 7 F. Supp. 1017 (W.D. La. 1934).

Ga.—City of Macon v. Samples, 167 Ga. 150, 145 S.E. 57 (1928).

Okla.—Farley v. Watt, 1933 OK 321, 165 Okla. 6, 23 P.2d 687 (1933).

18 Colo.—Antlers Athletic Ass'n v. Hartung, 85 Colo. 125, 274 P. 831 (1928).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

a. In General

§ 1527. Classification according to amount of business or capital

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3580, 3682 to 3703

A business may be classified and license fees graduated according to the amount of capital employed or business done without violating the equal protection guaranty, provided there is no unjust discrimination, but such classification is not generally compulsory.

Unless the graduation is not based on a sound distinction and unjustly discriminates against one or more of the persons engaged in the business,[1] the constitutional requirement of equal protection of the laws is not violated by the classification of a business, for the purpose of license taxes, and the fee or tax graduated, according to the amount of capital employed therein,[2] or fees charged,[3] or according to the amount of business done[4] as measured by gross receipts[5] or salary and wages received.[6]

Except where such graduated classification is required by a constitutional provision,[7] it is not compulsory, and the mere fact that license taxes in a given class are fixed and not graduated in proportion to the amount of business is not a denial of equal

protection.[8] There is authority that the classification should be in exact proportion to the business done;[9] however, it has also been held that, unless the constitution so requires, it need not be an exact ratio.[10]

Footnotes

1 Ky.—City of Newport v. Frankel, 192 Ky. 408, 233 S.W. 884 (1921).
La.—State v. W.F. Pinckard & Co., 119 La. 228, 43 So. 1015 (1907).
S.C.—Ex parte Bates, 127 S.C. 167, 120 S.E. 717 (1923).
Petroleum profits tax
N.Y.—Merit Oil of New York, Inc. v. New York State Tax Commission, 111 Misc. 2d 118, 443 N.Y.S.2d 604 (Sup 1981).

2 **Exemption based on percentage amount of stock**
Tenn.—Sterchi Bros. Stores v. Wallace, 168 Tenn. 299, 77 S.W.2d 807 (1935).

3 U.S.—Metropolis Theater Co. v. City of Chicago, 228 U.S. 61, 33 S. Ct. 441, 57 L. Ed. 730 (1913).
Ky.—City of Newport v. Frankel, 192 Ky. 408, 233 S.W. 884 (1921).

4 Cal.—Web Service Co. v. Spencer, 252 Cal. App. 2d 827, 61 Cal. Rptr. 493 (4th Dist. 1967).
Ky.—City of Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248 (1948).
N.Y.—Noyes v. Wohl, 266 A.D. 52, 41 N.Y.S.2d 571 (3d Dep't 1943), order aff'd, 291 N.Y. 695, 52 N.E.2d 590 (1943).

5 U.S.—New York Rapid Transit Corporation v. City of New York, 303 U.S. 573, 58 S. Ct. 721, 82 L. Ed. 1024 (1938).
Utah—Mountain States Tel. & Tel. Co. v. Salt Lake City, 596 P.2d 649 (Utah 1979).
National averages
Ga.—Pharr Road Inv. Co. v. City of Atlanta, 224 Ga. 752, 164 S.E.2d 803 (1968).
Gross receipts not subject to or remaining after exemptions
U.S.—Antilles Surveys, Inc. v. De Jongh, 5 V.I. 560, 358 F.2d 787 (3d Cir. 1966).
Mont.—State ex rel. Griffin v. Greene, 104 Mont. 460, 67 P.2d 995, 111 A.L.R. 770 (1937).

6 Ala.—Jolly v. City of Birmingham, 55 Ala. App. 603, 318 So. 2d 300 (Civ. App. 1975).
Ky.—City of Louisville v. Sebree, 308 Ky. 420, 214 S.W.2d 248 (1948).
Specific applications of the foregoing rules are considered in § 1515, with respect to corporate franchise or license taxes; §§ 1535 to 1537 as to merchants and chain stores; and § 1538 as to motor carriers.

7 La.—State v. Winehill & Rosenthal, 147 La. 781, 86 So. 181 (1920).

8 La.—State v. Arthur Duvic's Sons, 185 La. 647, 170 So. 23 (1936).
N.J.—Ring v. Mayor and Council of Borough of North Arlington, 136 N.J.L. 494, 56 A.2d 744 (N.J. Sup. Ct. 1948), judgment aff'd, 1 N.J. 24, 61 A.2d 508 (1948).

9 Ga.—Johnston v. Mayor and Council of City of Macon, 62 Ga. 645, 1879 WL 2887 (1879).

10 La.—State v. Winehill & Rosenthal, 147 La. 781, 86 So. 181 (1920).
Wis.—Wisconsin Ass'n of Master Bakers v. Weigle, 167 Wis. 569, 168 N.W. 383 (1918).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

a. In General

§ 1528. Classification according to localities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3580, 3682 to 3703

A reasonable classification of licenses and license taxes according to locality may be sustained under the equal protection guaranty.

The requirement of a license may in a proper case apply only to those occupied in certain classes of cities;[1] and in different cities or localities, a given occupation, business, or privilege may, on the basis of difference in population or conditions, without violating constitutional provisions relating to equal protection of the laws, be subject to different rates of taxation,[2] or to different rules or requirements governing the issuance of a license,[3] unless such classification is made arbitrarily and is not based on a rational difference of situation or conditions found in the different cities or localities.[4] This latter rule is particularly applicable where the license fee is imposed mainly for the purpose of revenue so that it may be regarded as a pure tax in the constitutional sense.[5]

Municipalities may impose local license taxes upon businesses doing business both within and outside the taxing jurisdiction without violating equal protection[6] as long as such taxes are apportioned in a manner by which the measure of tax fairly reflects that portion of the taxed activity which is actually carried on within the taxing jurisdiction.[7] However, local taxes which operate to unfairly discriminate against intercity businesses by subjecting them to a measure of taxation which is not fairly apportioned to the quantum of business actually done in the taxing jurisdiction deny equal protection.[8]

Footnotes

1 N.Y.—Roosevelt Raceway, Inc. v. Nassau County, 18 N.Y.2d 30, 271 N.Y.S.2d 662, 218 N.E.2d 539 (1966).
Okla.—Peters v. State, 56 Okla. Crim. 95, 34 P.2d 286 (1934).

2 Cal.—Helton v. City of Long Beach, 55 Cal. App. 3d 840, 127 Cal. Rptr. 737 (2d Dist. 1976).
S.C.—Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948).
Tex.—Dallas Gas Co. v. State, 261 S.W. 1063 (Tex. Civ. App. Austin 1924), writ refused, (May 14, 1924).
Cities on state border
Ark.—Wiseman v. Phillips, 191 Ark. 63, 84 S.W.2d 91 (1935).
Tax credit
Ky.—Preston v. Johnson County Fiscal Court, 27 S.W.3d 790 (Ky. 2000).

3 Ind.—Shedd v. Automobile Ins. Co., 208 Ind. 621, 196 N.E. 227 (1935).
R.I.—C. Tisdall Co. v. Board of Aldermen of City of Newport, 57 R.I. 96, 188 A. 648 (1936).
Wis.—Manufacturers' & Merchants' Inspection Bureau v. Buech, 173 Wis. 433, 181 N.W. 125 (1921).

4 Ga.—Richmond County v. Richmond County Business Ass'n, 228 Ga. 281, 185 S.E.2d 399 (1971).
Md.—Dasch v. Jackson, 170 Md. 251, 183 A. 534 (1936).
Wis.—Town of Caledonia v. Racine Limestone Co., 266 Wis. 475, 63 N.W.2d 697 (1954).

5 Ky.—Hager v. Walker, 128 Ky. 1, 32 Ky. L. Rptr. 748, 107 S.W. 254 (1908).
N.C.—State v. Carter, 129 N.C. 560, 40 S.E. 11 (1901).

6 Cal.—City of Los Angeles v. Shell Oil Co., 4 Cal. 3d 108, 93 Cal. Rptr. 1, 480 P.2d 953 (1971).

7 Cal.—Volkswagen Pacific, Inc. v. City of Los Angeles, 7 Cal. 3d 48, 101 Cal. Rptr. 869, 496 P.2d 1237 (1972).

8 Cal.—Macy's Dept. Stores, Inc. v. City and County of San Francisco, 143 Cal. App. 4th 1444, 50 Cal. Rptr. 3d 79 (1st Dist. 2006).

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K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

a. In General

§ 1529. Discrimination based on residence or citizenship

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3371, 3580, 3682 to 3703

Discriminations in licensing enactments based on residence usually constitute a denial of equal protection, but provisions restricting the right to a license to citizens of the United States are generally valid under the equal protection guaranty.

A statute or ordinance which confines the right to a license to residents of the state or municipality,[1] or to persons who are residents and have been for a specified period of time,[2] or requires only nonresidents to have a license,[3] is generally held unconstitutional as a denial of the equal protection of the laws. A residency requirement for licensing a profession does not violate the Equal Protection Clause where it serves a rational state purpose,[4] but the rule is otherwise where there is an arbitrary or unreasonable classification.[5]

Similarly, equal protection is generally violated by a statute or ordinance which taxes the business, occupation, or privileges of a nonresident in a different manner or at a different rate from that of a resident[6] or other nonresidents.[7] Although discriminations in this respect which are not arbitrary or capricious and substantial are not fatal to the validity of the tax, residents and nonresidents

engaged in the same occupation or business must be treated substantially alike in the matter of imposing a license tax.[8] On the other hand, ordinances imposing higher license taxes on the business of nonresidents than on that of residents have been upheld where it has been shown that the residents are otherwise taxed directly and indirectly in ways which the nonresidents wholly escape.[9] The mere fact that license taxes are imposed on nonresidents does not make the taxes invalid if they apply alike to all in the same situation, and there is no discrimination against the nonresidents in favor of residents engaged in the same class of business or enjoying the same privileges;[10] and even such discriminations have been sustained with reference to certain privileges or occupations.[11]

Discrimination in favor of nonresidents.

An act or ordinance which provides for the payment of a license tax by residents of the state or municipality only does not discriminate unlawfully in favor of nonresidents[12] as in the case of one taxing professions practiced within the city or state and exempting therefrom persons temporarily there on specific professional business.[13] A statute permitting one who has been admitted to practice his or her profession in another state and has practiced there a specified time to be admitted to practice without further examination is not a denial of equal protection to residents who are required to pass examinations before being licensed to practice.[14]

Aliens.

Since alienage is a suspect classification, a law which conditions a license to engage in an occupation, profession, or business on United States citizenship violates the Equal Protection Clause unless the State has a compelling reason for the exclusion.[15] Thus, where the business is one which is not injurious to the public morals, health, or welfare, a restriction that licenses shall be issued only to persons who have been citizens for a few years has been held invalid.[16]

Footnotes

1 U.S.—Southern Wine and Spirits of America, Inc. v. Division of Alcohol and Tobacco Control, 731 F.3d 799 (8th Cir. 2013).
Ark.—Ragland v. Forsythe, 282 Ark. 43, 666 S.W.2d 680 (1984).
Del.—Green v. Mid-Penn Nat. Mortg. Co., 268 A.2d 876 (Del. 1970).

2 U.S.—City of New Brunswick v. Zimmerman, 79 F.2d 428 (C.C.A. 3d Cir. 1935).
N.Y.—Schrager v. City of Albany, 197 Misc. 903, 99 N.Y.S.2d 697 (Sup 1950).

3 Mich.—Colonial Baking Co. of Grand Rapids v. City of Fremont, 296 Mich. 185, 295 N.W. 608 (1941).

4 **Accessibility**
Ohio—Associated Adjusters of Ohio, Inc. v. Ohio Dept. of Ins., 50 Ohio St. 2d 144, 4 Ohio Op. 3d 341, 6 Ohio Op. 3d 481, 6 Ohio Op. 3d 488, 363 N.E.2d 730 (1977).
Equal protection of law as applied to licensing of professionals, generally, see § 1539, and as applied to residency requirements requisite to practice as law, see § 1540.
Efficiency in passing on standards
U.S.—Ward v. Board of Examiners of Engineers, Architects and Surveyors of Com. of Puerto Rico, 409 F. Supp. 1258 (D.P.R. 1976), judgment aff'd, 429 U.S. 801, 97 S. Ct. 37, 50 L. Ed. 2d 64 (1976).

5 **Renewal certificate**
Fla.—Florida State Bd. of Dentistry v. Mick, 361 So. 2d 414 (Fla. 1978).

6 U.S.—Campbell Baking Co. v. City of Maryville, Mo., 31 F.2d 466 (W.D. Mo. 1929).
Del.—Conard v. State, 41 Del. 107, 16 A.2d 121 (Super. Ct. 1940).
Ohio—Myers v. City of Defiance, 67 Ohio App. 159, 21 Ohio Op. 165, 31 Ohio L. Abs. 636, 36 N.E.2d 162 (3d Dist. Defiance County 1940).

Validity of tax distinguishing between peddlers or itinerant dealers and merchants having permanent place of business, see § 1535.

Tax on vehicles of nonresidents

Ky.—Davis v. Pelfrey, 285 Ky. 298, 147 S.W.2d 723 (1941).

7 N.Y.—People ex rel. Village of Lawrence v. Kraushaar, 195 Misc. 487, 89 N.Y.S.2d 685 (Dist. Ct. 1949).

8 Fla.—O'Connell v. Kontojohn, 131 Fla. 783, 179 So. 802 (1938).

9 Va.—Vaughan v. City of Richmond, 165 Va. 145, 181 S.E. 372 (1935).

10 U.S.—Bailey v. Smith, 40 F.2d 958 (S.D. Iowa 1928).

Cal.—Sivertsen v. City of Menlo Park, 17 Cal. 2d 197, 109 P.2d 928 (1941).

Ky.—City of Lexington v. Jones, 289 Ky. 719, 160 S.W.2d 19 (1942).

Inapplicable exemptions

A statute imposing the same motor vehicle privilege tax on nonresidents as on residents is not invalid as to the former because payment of such tax exempts the taxpayer from payment of a property tax to which the nonresident is not subject.

U.S.—Storaasli v. State of Minn., 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931).

11 Me.—State v. Lemar, 147 Me. 405, 87 A.2d 886 (1952).

N.Y.—People ex rel. Village of Lawrence v. Kraushaar, 195 Misc. 487, 89 N.Y.S.2d 685 (Dist. Ct. 1949).

Vt.—Bondi v. Mackay, 87 Vt. 271, 89 A. 228 (1913).

12 Ark.—City of Ft. Smith v. Scruggs, 70 Ark. 549, 69 S.W. 679 (1902).

S.C.—Ponder v. City of Greenville, 196 S.C. 79, 12 S.E.2d 851 (1941).

Validity of tax on ownership and operation of motor vehicles by resident, see § 1530.

13 Ky.—Evers v. City of Mayfield, 120 Ky. 73, 27 Ky. L. Rptr. 481, 85 S.W. 697 (1905).

Or.—State v. Smith, 127 Or. 680, 273 P. 343 (1929).

Equal protection of law as applied to licensing of professionals, generally, see § 1539.

14 Wis.—Price v. State, 168 Wis. 603, 171 N.W. 77 (1919).

Application of equal protection guaranty to acquiring license to practice law without examination, see § 1540.

15 U.S.—Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero, 426 U.S. 572, 96 S. Ct. 2264, 49 L. Ed. 2d 65 (1976).

For a general discussion of the citizenship requirement to practice law, see § 1540 and C.J.S., Attorney and Client § 17.

16 N.Y.—Wormsen v. Moss, 177 Misc. 19, 29 N.Y.S.2d 798 (Sup 1941).

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16C C.J.S. Constitutional Law § 1530

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

b. Motor Vehicles and Operators

§ 1530. Motor vehicle license taxes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3728

Motor vehicle license taxes not inherently oppressive or based on an unreasonable classification are valid under the Equal Protection Clause.

While the State cannot exact an arbitrary toll for revenue from any class of highway users,[1] or establish a discriminatory classification of highway users,[2] statutes providing for vehicle license taxes or fees which are not inherently oppressive or based on an unreasonable classification are not objectionable as denying the equal protection of the laws.[3] A statute is not invalid because it authorizes the use of the tax for other than highway purposes[4] or because no part of the tax is returned to the municipalities on whose streets the vehicles are partially used.[5] Moreover, an act for the appropriation of motor vehicle and gasoline taxes for highway purposes is not invalid for failure to provide for hearing on the benefits or to apportion the tax.[6]

A state extending a privilege of free use of the highways to nonresident owners of vehicles may limit the concession to those who have registered such vehicles in another state or country[7] which grants like exemption to residents of the taxing state.[8] An

act or ordinance requiring residents to pay a tax for the privilege of keeping or operating vehicles, and exempting nonresidents therefrom, is not invalid.[9] Where a tax on gross earnings is deemed inconsistent with any other tax, a statute subjecting to motor vehicle registration tax vehicles owned by companies taxed on gross earnings has been held to deprive them of equal protection of the law;[10] but a similar statute passed pursuant to a subsequently enacted constitutional amendment, permitting such a combination of taxes, has been held valid.[11]

Vehicles may be classified according to type, size, weight, use, horsepower, age, etc.,[12] such as vehicles operated in interstate commerce or those solely operated in intrastate commerce,[13] vehicles used by the owner or his family for private use and those used for commercial purposes,[14] vehicles used in agricultural pursuits and those not so employed,[15] and gas fuel motor vehicles and electric motor vehicles.[16] A statute licensing trucks according to their carrying capacity need not distinguish between vehicles continuously in use and those used only occasionally.[17] However, a statute imposing a mileage tax on vehicles which use motor fuel other than that which is taxed by another specific statute has been held unconstitutional as an unreasonable discrimination.[18]

CUMULATIVE SUPPLEMENT

Cases:

Statute imposing $2 surcharge on cost of annual registration of certain motor vehicles, which surcharge was deposited into park and conservation fund for the Department of Natural Resources (DNR) to use for conservation efforts, bore relationship to object of legislation or to public policy, as would support finding that surcharge did not violate uniformity clause; people who did not own subject vehicles did not contribute to pollution and the need for roads to the same degree as subject vehicle owners. S.H.A. Const. Art. 9, § 2;S.H.A. 625 ILCS 5/3–806. Friedman v. White, 2015 IL App (2d) 140942, 397 Ill. Dec. 656, 42 N.E.3d 902 (App. Ct. 2d Dist. 2015), appeal denied, 397 Ill. Dec. 455, 42 N.E.3d 370 (Ill. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Morf v. Ingels, 14 F. Supp. 922 (S.D. Cal. 1936), aff'd, 300 U.S. 290, 57 S. Ct. 439, 81 L. Ed. 653 (1937).

2 **Nonresident accepting employment**
N.M.—State v. Pate, 1943-NMSC-007, 47 N.M. 182, 138 P.2d 1006 (1943).

3 U.S.—Aero Mayflower Transit Co. v. Board of R. R. Com'rs of State of Mont., 332 U.S. 495, 68 S. Ct. 167, 92 L. Ed. 99 (1947).
Cal.—T.E. Connolly, Inc., v. State, 72 Cal. App. 2d 145, 164 P.2d 60 (3d Dist. 1945).
N.J.—State v. Garford Trucking, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950).
Denial of license for failure to pay city personal tax
Mo.—Hammett v. Kansas City, 351 Mo. 192, 173 S.W.2d 70 (1943).
Deduction of prior fee
S.C.—Heslep v. State Highway Dept. of South Carolina, 171 S.C. 186, 171 S.E. 913 (1933).
Food trucks
U.S.—Jewel Tea Co. v. City of Troy, Ill., 80 F.2d 366 (C.C.A. 7th Cir. 1935).

4 Ohio—Calerdine v. Freiberg, 129 Ohio St. 453, 2 Ohio Op. 437, 195 N.E. 854 (1935).
Public transportation
Ill.—Day v. Regional Transp. Authority, 66 Ill. 2d 533, 6 Ill. Dec. 882, 363 N.E.2d 829 (1977).

5 Miss.—State ex rel. Rice v. Evans-Terry Co., 173 Miss. 526, 159 So. 658 (1935), aff'd, 296 U.S. 538, 56 S. Ct. 126, 80 L. Ed. 383 (1935).

6 S.C.—State v. Moorer, 152 S.C. 455, 150 S.E. 269 (1929).

7 U.S.—Storaasli v. State of Minn., 283 U.S. 57, 51 S. Ct. 354, 75 L. Ed. 839 (1931).

8 U.S.—Bode v. Barrett, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

9 Me.—State v. Chandler, 131 Me. 262, 161 A. 148, 82 A.L.R. 1389 (1932).

N.J.—State v. Garford Trucking, 4 N.J. 346, 72 A.2d 851, 16 A.L.R.2d 1407 (1950).

County tax for construction and maintenance of roads

S.C.—State v. Touchberry, 121 S.C. 5, 113 S.E. 345 (1922).

Caravan tax

Idaho—George B. Wallace, Inc. v. Pfost, 57 Idaho 279, 65 P.2d 725, 110 A.L.R. 613 (1937).

10 Minn.—Railway Exp. Agency v. Holm, 180 Minn. 268, 230 N.W. 815 (1930).

11 Minn.—State ex rel. Railway Express Agency v. Holm, 209 Minn. 9, 295 N.W. 297 (1940).

12 U.S.—Carley & Hamilton v. Snook, 281 U.S. 66, 50 S. Ct. 204, 74 L. Ed. 704, 68 A.L.R. 194 (1930).

Ill.—Gilligan v. Korzen, 56 Ill. 2d 387, 308 N.E.2d 613 (1974).

Minn.—Anderson v. Lappegaard, 302 Minn. 266, 224 N.W.2d 504 (1974).

Street and highway regulations governing type, size, weight, and use of vehicles, generally, see § 1546.

Automobiles moving in caravans

U.S.—Clark v. Paul Gray, Inc., 306 U.S. 583, 59 S. Ct. 744, 83 L. Ed. 1001 (1939).

Cal.—Lord v. Henderson, 105 Cal. App. 2d 426, 234 P.2d 197 (2d Dist. 1951).

Wyo.—Kenosha Auto Transport Corp. v. City of Cheyenne, 55 Wyo. 298, 100 P.2d 109 (1940).

Passenger vehicles distinguished from trucks

Ind.—Eavey Co. v. Department of Treasury of Ind., 216 Ind. 255, 24 N.E.2d 268 (1939).

Trailers

Wash.—State ex rel. Scott v. Superior Court for Thurston County, 173 Wash. 547, 24 P.2d 87 (1933).

Unreasonable classifications

N.H.—Rosenblum v. Griffin, 89 N.H. 314, 197 A. 701, 115 A.L.R. 1367 (1938).

N.J.—Weimar Storage Co. v. Dill, 103 N.J. Eq. 307, 143 A. 438 (Ch. 1928).

13 Ariz.—Wiseman v. Arizona Highway Dept. ex rel. Campbell, 11 Ariz. App. 301, 464 P.2d 372 (Div. 1 1970).

Minn.—State v. Oligney, 162 Minn. 302, 202 N.W. 893 (1925).

14 U.S.—Dixie Ohio Exp. Co. v. State Revenue Commission of Georgia, 306 U.S. 72, 59 S. Ct. 435, 83 L. Ed. 495 (1939).

La.—Gulf States Utilities Co. v. Traigle, 310 So. 2d 78 (La. 1975).

Utah—Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).

15 Ill.—Bode v. Barrett, 412 Ill. 204, 106 N.E.2d 521 (1952), judgment aff'd, 344 U.S. 583, 73 S. Ct. 468, 97 L. Ed. 567 (1953).

16 Cal.—Old Homestead Bakery v. Marsh, 75 Cal. App. 247, 242 P. 749 (3d Dist. 1925).

Ohio—State ex rel. Brunenkant v. Wallace, 137 Ohio St. 379, 19 Ohio Op. 93, 30 N.E.2d 696 (1940).

17 U.S.—Aero-Mayflower Transit Co. v. Watson, 5 F. Supp. 1009 (E.D. Ark. 1934).

18 Utah—Carter v. State Tax Commission, 98 Utah 96, 96 P.2d 727, 126 A.L.R. 1402 (1939).

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16C C.J.S. Constitutional Law § 1531

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

b. Motor Vehicles and Operators

§ 1531. Drivers' licenses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3730, 3731

Provided that they apply alike to all members of a class, regulations requiring operators or drivers of motor vehicles to obtain licenses and pay fees therefor do not violate the Equal Protection Clause.

The State, in requiring licenses as a condition for driving motor vehicles, is restricted by the Equal Protection Clause;[1] however, the right to drive a motor vehicle is not a fundamental right such as to invoke strict judicial scrutiny.[2] Therefore, provided that they apply alike to all members of a class, regulations requiring operators or drivers of motor vehicles to obtain licenses and pay fees therefor do not violate the Equal Protection Clause.[3] In addition, particular conditions for obtaining or retaining a motor vehicle operator's license are valid even though they result in licenses for some classes but not for others if they rest on a rational basis and are reasonable and not arbitrary.[4] On the other hand, laws granting, suspending, or revoking motor vehicle operators' licenses based on arbitrary, irrational, or unreasonable classifications violate the Equal Protection Clause.[5]

A statute which provides a hearing, upon request, to one who is about to have his or her license suspended affords equal protection where it applies uniformly to all who come within its provisions.[6]

Driving while intoxicated.

A statute declaring that a licensed operator shall be deemed to have consented in advance to certain tests to determine if he or she has been driving in an intoxicated condition, and that refusal to submit to such tests shall be ground for revocation or suspension of his or her license, is not a denial of equal protection[7] even where suspension is automatic for a driver who refuses the test but discretionary for a driver who takes the test and is found to be intoxicated.[8] Equal protection is also not denied by suspending or revoking a license on conviction of driving under the influence of alcohol[9] even where other drivers similarly convicted retain their licenses by participating in alcohol treatment programs.[10]

Other questions concerning equal protection and statutes concerning driving while intoxicated have been adjudicated.[11]

Habitual offenses and point system.

Licenses may be suspended or revoked under habitual traffic offender[12] or point system[13] statutes which make reasonable distinctions, without violating the Equal Protection Clause.

Hardship license.

A statute may authorize the issuance of a driver's license to one whose license has been suspended but who needs to drive in the performance of his or her occupation while denying a license to other drivers whose licenses have also been suspended but who do not need to drive for their employment.[14] On the other hand, a driver whose license has been suspended may be refused a hardship license under a mandatory suspension statute even though he or she suffers hardship, such as the deprivation of his employment, while others with fewer or other convictions are permitted a license under an employment or hardship exception.[15] The fact that application of a mandatory suspension law containing no hardship exception will result in some cases only in deprivation of the right to drive for pleasure while in others its application will deprive the motorist of his employment does not make such law violative of equal protection.[16]

CUMULATIVE SUPPLEMENT

Cases:

Suspension of attorney's driver's license, under California statutory scheme establishing public list of top 500 delinquent state taxpayers who owed in excess of $100,000, and providing for suspension of driver's license of a taxpayer on the delinquent list, did not impermissibly burden attorney's chosen profession in violation of his Fourteenth Amendment substantive due process rights; revocation of his driver's license did not operate as a complete prohibition on his ability to practice law, in that he still had access to public transit. U.S. Const. Amend. 14; Cal. Bus. & Prof. Code § 494.5; Cal. Rev. & Tax. Code § 19195. Franceschi v. Yee, 887 F.3d 927 (9th Cir. 2018).

Pennsylvania statute requiring the suspension of driver's licenses upon license holders' conviction of any controlled substance offense under federal or state law, regardless of whether the offense involved a vehicle or traffic safety, was rationally related to legitimate governmental interests in receiving full federal funding and discouraging the violation of narcotics laws, and thus, statute did not violate equal protection; the legislature could treat different crimes differently, statute's legislative history

reflected not a purpose to discriminate, but to impose a suspension upon drug offenders as a message to young people of consequences of drug use and as a meaningful penalty, and federal law provided that federal funds would be withheld from a state that had not enacted or enforced a law requiring suspension of driver's license upon holder's conviction of any drug offense. U.S. Const. Amend. 14, § 1; 23 U.S.C.A. § 159(a); 75 Pa. Cons. Stat. Ann. § 1532(c). Harold v. Richards, 334 F. Supp. 3d 635 (E.D. Pa. 2018).

Tennessee statute authorizing revocation of driver's license of any person who failed to pay court fines, costs, or litigation taxes for year or more was not rationally related to state's legitimate interest in collecting court debts, and, thus, revocation of indigent drivers' licenses for failure to timely pay court debts, without inquiry into drivers' ability to pay, violated their due process and equal protection rights; revocation of indigent drivers' licenses would make it more difficult for them to hold a job and pay court debts, determination of indigence of court debtors fit into preexisting system where such determinations were wholly routine, and penalizing indigent court debtors for their inability to satisfy their debts was powerful threat to basic self-sufficiency needed to pay court debts. U.S. Const. Amend. 14; Tenn. Code Ann. § 40-24-105(b). Thomas v. Haslam, 329 F. Supp. 3d 475 (M.D. Tenn. 2018).

Amendment to statute, governing the operation of a motor vehicle during a period of suspension, revocation, or impoundment, applied to defendant who had her license suspended after pleading guilty to first-offense driving during revocation, and thus court had discretion, and it was not required that defendant have her driver's license revoked for a period of one year; statute was amended after defendant committed the offense of driving during revocation, but before final judgment. Neb. Rev. Stat. § 60-4,108. State v. Huston, 298 Neb. 323, 903 N.W.2d 907 (2017).

[END OF SUPPLEMENT]

Footnotes

1 N.Y.—People v. Joy, 50 Misc. 2d 690, 271 N.Y.S.2d 15 (Dist. Ct. 1966).

2 Mo.—Stewart v. Director of Revenue, 702 S.W.2d 472 (Mo. 1986).
Neb.—Porter v. Jensen, 223 Neb. 438, 390 N.W.2d 511 (1986).
N.C.—Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

3 Fla.—State v. Quigg, 86 Fla. 51, 96 So. 8 (1923).

4 U.S.—Rehbock v. Dixon, 458 F. Supp. 1056 (N.D. Ill. 1978).
Conn.—Cormier v. Commissioner of Motor Vehicles, 105 Conn. App. 558, 938 A.2d 1258 (2008).
Mo.—Amick v. Director of Revenue, 428 S.W.3d 638 (Mo. 2014), cert. denied, 135 S. Ct. 226, 190 L. Ed. 2d 171 (2014).
N.M.—State v. Valdez, 2013-NMCA-016, 293 P.3d 909 (N.M. Ct. App. 2012).
Pa.—Thorek v. Com., Dept. of Transp., Bureau of Driver Licensing, 938 A.2d 505 (Pa. Commw. Ct. 2007).
R.I.—Beaudoin v. Petit, 122 R.I. 469, 409 A.2d 536 (1979).
S.C.—State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980).
Age
Me.—State v. Dube, 409 A.2d 1102 (Me. 1979).
Conviction of controlled substances violation
Mass.—Rushworth v. Registrar of Motor Vehicles, 413 Mass. 265, 596 N.E.2d 340 (1992).
Disqualification of commercial driver's license
Wash.—Martin v. State Dept. of Licensing, 175 Wash. App. 9, 306 P.3d 969 (Div. 2 2013).
Surrender of license from other jurisdiction
N.H.—State v. Mitchell, 115 N.H. 720, 349 A.2d 862 (1975).
Sales tax
U.S.—Wells v. Malloy, 402 F. Supp. 856 (D. Vt. 1975), aff'd, 538 F.2d 317 (2d Cir. 1976).
Suspension of license for adverse medical condition
Me.—Davis v. Secretary of State, Div. of Motor Vehicles, 577 A.2d 338 (Me. 1990).

Vision

Iowa—Gooch v. Iowa Dept. of Transp., 398 N.W.2d 845 (Iowa 1987).

A.L.R. Library

Validity of State Statutes, Regulations, or other Identification Requirements Restricting or Denying Driver's Licenses to Illegal Aliens, 16 A.L.R.6th 131.

5 Ill.—People v. Sherman, 57 Ill. 2d 1, 309 N.E.2d 562 (1974).

Wyo.—Johnson v. State Hearing Examiner's Office, 838 P.2d 158 (Wyo. 1992).

Bar based on prior convictions

U.S.—Miller v. Carter, 547 F.2d 1314 (7th Cir. 1977), judgment aff'd, 434 U.S. 356, 98 S. Ct. 786, 54 L. Ed. 2d 603 (1978).

6 La.—Spencer v. State Dept. of Public Safety, 315 So. 2d 912 (La. Ct. App. 4th Cir. 1975).

Notification period

Neb.—Giberson v. Quinn, 445 A.2d 1007 (Me. 1982).

7 Ark.—Cook v. State, 321 Ark. 641, 906 S.W.2d 681 (1995).

Ga.—State v. Martin, 266 Ga. 244, 466 S.E.2d 216 (1996).

Neb.—Betterman v. State, Dept. of Motor Vehicles, 273 Neb. 178, 728 N.W.2d 570 (2007).

Or.—State v. Abbey, 239 Or. App. 306, 245 P.3d 152 (2010).

Consent not withdrawn when unconscious

N.M.—State v. Trujillo, 85 N.M. 208, 1973-NMCA-076, 510 P.2d 1079 (Ct. App. 1973).

Determination by plea held violative

Vt.—Veilleux v. Springer, 131 Vt. 33, 300 A.2d 620 (1973).

Evidence of lack of uniform enforcement insufficient

Ky.—Newman v. Stinson, 489 S.W.2d 826 (Ky. 1972).

Person of own choosing to administer chemical test

Ohio—Smith v. State Registrar of Motor Vehicles, 40 Ohio App. 2d 208, 69 Ohio Op. 2d 195, 318 N.E.2d 431 (2d Dist. Montgomery County 1974).

Use of urine test rather than blood test

Minn.—Hayes v. Commissioner of Public Safety, 773 N.W.2d 134 (Minn. Ct. App. 2009).

Time limit on administration of test

Iowa—State v. Martin, 383 N.W.2d 556 (Iowa 1986).

8 Colo.—Augustino v. Colorado Dept. of Revenue Motor Vehicle Division, 193 Colo. 273, 565 P.2d 933 (1977).

N.M.—In re McCain, 1973-NMSC-023, 84 N.M. 657, 506 P.2d 1204 (1973).

Classes different with applicable one applicable

Cal.—Walker v. Department of Motor Vehicles, 274 Cal. App. 2d 793, 79 Cal. Rptr. 433 (2d Dist. 1969).

Probationary or temporary license

Colo.—Hall v. Charnes, 42 Colo. App. 111, 590 P.2d 516 (App. 1979).

N.D.—Gableman v. Hjelle, 224 N.W.2d 379 (N.D. 1974).

9 Ark.—Carney v. State, 305 Ark. 431, 808 S.W.2d 755 (1991).

Ill.—People v. Fisher, 184 Ill. 2d 441, 235 Ill. Dec. 454, 705 N.E.2d 67 (1998).

Mo.—Amick v. Director of Revenue, 428 S.W.3d 638 (Mo. 2014), cert. denied, 135 S. Ct. 226, 190 L. Ed. 2d 171 (2014).

Summary proceeding

Ind.—Ruge v. Kovach, 467 N.E.2d 673 (Ind. 1984).

N.C.—Henry v. Edmisten, 315 N.C. 474, 340 S.E.2d 720 (1986).

10 Cal.—Department of Motor Vehicles v. Superior Court, 58 Cal. App. 3d 936, 130 Cal. Rptr. 311 (1st Dist. 1976).

Mass.—Healy v. First Dist. Court of Bristol, 367 Mass. 909, 327 N.E.2d 894 (1975).

Pa.—Freed v. Com., 48 Pa. Commw. 178, 409 A.2d 1185 (1979), order aff'd, 493 Pa. 230, 425 A.2d 747 (1981).

Denial of alcohol-related difficulties

N.Y.—Miller v. Tofany, 88 Misc. 2d 247, 387 N.Y.S.2d 342 (Sup 1975).

Non-alcohol-related offenses

Wash.—State v. Kent, 87 Wash. 2d 103, 549 P.2d 721 (1976).

11 **Shorter suspension for commercial licensees**

Cal.—Peretto v. Department of Motor Vehicles, 235 Cal. App. 3d 449, 1 Cal. Rptr. 2d 392 (1st Dist. 1991).

Juvenile offenders

Iowa—In Interest of C.P., 569 N.W.2d 810 (Iowa 1997).

Minn.—Backdahl v. Commissioner of Public Safety, 479 N.W.2d 89 (Minn. Ct. App. 1992).

Mo.—Riche v. Director of Revenue, 987 S.W.2d 331 (Mo. 1999).

Wash.—Davis v. State ex rel. Department of Licensing, 137 Wash. 2d 957, 977 P.2d 554 (1999).

Probationary license

Colo.—Bath v. Colorado Dept. of Revenue, Motor Vehicle Div., 758 P.2d 1381 (Colo. 1988).

Lesser penalty for refusing test unconstitutional

Ohio—State v. Culp, 65 Ohio Misc. 2d 88, 641 N.E.2d 293 (Mun. Ct. 1994).

Varying punishments

Ark.—O'Neill v. State, 322 Ark. 299, 908 S.W.2d 637 (1995).

12 Colo.—People v. Shaver, 630 P.2d 600 (Colo. 1981).

Fla.—Zarsky v. State, 300 So. 2d 261 (Fla. 1974).

Ga.—Camp v. Department of Public Safety, 241 Ga. 419, 246 S.E.2d 296 (1978).

Issue of validity not determinative

Wash.—State v. Scheffel, 82 Wash. 2d 872, 514 P.2d 1052 (1973).

13 Colo.—Keegan v. State, Dept. of Revenue, 194 Colo. 325, 571 P.2d 1110 (1977).

Mo.—Phipps v. Schaffner, 505 S.W.2d 89 (Mo. 1974).

Minors

Colo.—Lopez v. Motor Vehicle Division, Dept. of Revenue, 189 Colo. 133, 538 P.2d 446 (1975).

Truck drivers

Utah—Barney v. Cox, 588 P.2d 696 (Utah 1978).

Regular or chauffeur's license

Colo.—Smith v. Charnes, 649 P.2d 1089 (Colo. 1982).

14 **Arrival at place of employment**

Tex.—Ex parte Salter, 452 S.W.2d 711 (Tex. Civ. App. Houston 1st Dist. 1970), writ refused, (July 29, 1970).

15 Cal.—Pepin v. Department of Motor Vehicles, 275 Cal. App. 2d 9, 79 Cal. Rptr. 657 (4th Dist. 1969).

Mo.—Williams v. Schaffner, 477 S.W.2d 55 (Mo. 1972).

Occupational driving permits to implied consent violators

Neb.—Porter v. Jensen, 223 Neb. 438, 390 N.W.2d 511 (1986).

Improper grant elsewhere

Ohio—City of Akron v. Doane, 59 Ohio Misc. 1, 13 Ohio Op. 3d 48, 391 N.E.2d 755 (Mun. Ct. 1978), judgment aff'd, 1979 WL 207519 (Ohio Ct. App. 9th Dist. Summit County 1979).

Farm labor vehicle driver certificate

Cal.—Alderette v. Department of Motor Vehicles, 135 Cal. App. 3d 174, 185 Cal. Rptr. 172 (1st Dist. 1982).

16 Ariz.—Kellum v. Thorneycroft ex rel. Arizona Highway Dept. Motor Vehicle Div., 133 Ariz. 115, 649 P.2d 994 (Ct. App. Div. 2 1982).

Cal.—Murphy v. Department of Motor Vehicles, 86 Cal. App. 3d 119, 150 Cal. Rptr. 20 (4th Dist. 1978).

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16C C.J.S. Constitutional Law § 1532

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

b. Motor Vehicles and Operators

§ 1532. Insurance; financial responsibility statutes

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3732

A state can require the procurement of liability insurance or a deposit of security by the owners of motor vehicles as a condition for registering such vehicles without violating the equal protection of the laws.

A state can require the procurement of liability insurance or a deposit of security by the owners of motor vehicles as a condition for registering such vehicles without violating the equal protection of the laws.[1] According to some authorities, a statute does not deny equal protection by requiring suspension of the vehicle registration of uninsured vehicles involved in accidents, unless security or proof of financial responsibility is furnished,[2] or resulting judgments are paid,[3] regardless of the financial condition of the vehicle owner. Other authorities, however, hold that such laws violate equal protection where the vehicle owner is financially unable to pay a judgment,[4] or is only vicariously liable,[5] or where the registration is suspended without provision for a hearing or appeal.[6]

Statutes requiring the suspension of licenses of uninsured drivers or owners involved in accidents, unless damage claims are settled,[7] judgments obtained against them by injured persons are satisfied,[8] or security to satisfy the judgments and proof of financial responsibility are furnished,[9] even without a prior determination of fault,[10] have been held not to deny equal protection of the laws regardless of the party's financial ability to meet these requirements. Other authorities, however, have held that such financial responsibility statutes violate equal protection where they discriminate against persons financially unable to pay a judgment,[11] where the party's liability is vicarious,[12] or where suspensions are mandatory, and there is no provision for a hearing or appeal.[13]

Damages threshold.

A statute mandating suspension of a driver's license for failure to produce proof of insurance when an accident causes death, bodily injury, or over $501 in property damage, but which does not require suspension if none of those conditions are present, complies with equal protection if it bears a close relationship to an important state interest.[14]

Footnotes

1 Mont.—State v. Turk, 197 Mont. 311, 643 P.2d 224 (1982).
Imposition of fine upheld
Ill.—People v. Simmons, 145 Ill. 2d 264, 164 Ill. Dec. 568, 583 N.E.2d 484 (1991).

2 U.S.—Faron v. Tynan, 320 F. Supp. 11 (D. Conn. 1970); Roberts v. Burson, 322 F. Supp. 380 (N.D. Ga. 1969).
Fla.—Williams v. Newton, 236 So. 2d 98 (Fla. 1970).
Requiring financial responsibility as a condition of using streets and highways, see § 1546.

3 Or.—Floyd v. Motor Vehicles Division, 27 Or. App. 41, 554 P.2d 1024 (1976).

4 U.S.—Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969).

5 U.S.—Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969).

6 U.S.—Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969).

7 U.S.—Roberts v. Burson, 322 F. Supp. 380 (N.D. Ga. 1969).
Requiring liability insurance or financial responsibility as a condition of using the streets and highways, see § 1546.

8 U.S.—Shultz v. Heyison, 439 F. Supp. 857 (M.D. Pa. 1975).
Or.—Floyd v. Motor Vehicles Division, 27 Or. App. 41, 554 P.2d 1024 (1976).
Creditor's discretion
Ga.—Keenan v. Hardison, 245 Ga. 599, 266 S.E.2d 205 (1980).

9 U.S.—Trujillo v. DeBaca, 320 F. Supp. 1038 (D.N.M. 1970).
Fla.—Williams v. Newton, 236 So. 2d 98 (Fla. 1970).
N.Y.—Merced v. Fisher, 83 Misc. 2d 755, 372 N.Y.S.2d 855 (Sup 1975).
Specified accidents
Cal.—Anacker v. Sillas, 65 Cal. App. 3d 416, 135 Cal. Rptr. 537 (2d Dist. 1976).
Exemption of self-insurers
Cal.—Escobedo v. State Dept. of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950) (overruled on other grounds by, Rios v. Cozens, 7 Cal. 3d 792, 103 Cal. Rptr. 299, 499 P.2d 979 (1972)).

10 U.S.—Trujillo v. DeBaca, 320 F. Supp. 1038 (D.N.M. 1970).
Cal.—Anacker v. Sillas, 65 Cal. App. 3d 416, 135 Cal. Rptr. 537 (2d Dist. 1976).
Fla.—Williams v. Newton, 236 So. 2d 98 (Fla. 1970).

11 U.S.—Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969).

12 U.S.—Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969).

13 U.S.—Miller v. Depuy, 307 F. Supp. 166 (E.D. Pa. 1969).

14 **Under state constitution**

Alaska—Titus v. State, Dept. of Admin., Div. of Motor Vehicles, 305 P.3d 1271 (Alaska 2013).

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16C C.J.S. Constitutional Law § 1533

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

c. Particular Occupations, Trades, Businesses, or Professions

(1) Occupations, Trades, or Businesses

§ 1533. Licensing and license or occupational taxes regarding particular occupations, trades, or businesses, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3682 to 3703

The general rules relating to occupation license taxes in connection with equal protection have been applied to a great variety of occupations, trades, and businesses.

Under the general principles governing the constitutionality, for equal protection purposes, of licensing requirements and fees,[1] statutes based on reasonable or unreasonable classifications have been upheld or not as violating or not violating the equal protection clause of federal and state constitutions when requiring a license of, or imposing a license fee or tax on, various occupations, trades, and businesses, such as bail bondsmen,[2] brokers engaged in real estate,[3] commission merchants,[4] contractors generally,[5] electricians[6] and electrical contractors,[7] embalmers and undertakers,[8] employment agencies,[9] and express companies.[10]

The above-mentioned rules have been also applied with respect to financial institutions,[11] horse and dog racing,[12] insurance companies[13] and their agents,[14] pawnbrokers,[15] plumbers,[16] production of oil or mineral products,[17] and public garages and parking lots.[18]

In addition, the rules have been applied to public utilities[19] such as persons, firms, and corporations engaged in generating electric power;[20] renters of rooms or offices;[21] restaurants, and places where food is prepared for consumption;[22] schools;[23] securities dealers;[24] theatres;[25] vending machine operators;[26] and veterinarians.[27]

CUMULATIVE SUPPLEMENT

Cases:

Owner of towing business failed to allege that city treated him differently from others similarly situated and, thus, failed to state equal protection claim against city under § 1983 in connection with suspension of his city-issued towing permit; although owner generally alleged that other similarly situated individuals were treated differently, he failed to point to any specific tow-truck operators who retained their permits despite multiple license lapses and complaints filed against them. U.S. Const. Amend. 14; 42 U.S.C.A. § 1983. Rountree v. Dyson, 892 F.3d 681 (5th Cir. 2018), cert. denied, 139 S. Ct. 595, 202 L. Ed. 2d 428 (2018).

[END OF SUPPLEMENT]

Footnotes

1 §§ 1524 to 1540.

2 Fla.—Grantham v. Gunter, 498 So. 2d 1328 (Fla. 4th DCA 1986).
Ohio—State ex rel. Howell v. Schiele, 85 Ohio App. 356, 40 Ohio Op. 234, 54 Ohio L. Abs. 471, 88 N.E.2d 215 (1st Dist. Hamilton County 1949), judgment aff'd, 153 Ohio St. 235, 41 Ohio Op. 249, 91 N.E.2d 5 (1950).

3 Ariz.—Whitaker v. Arizona Real Estate Bd., 26 Ariz. App. 347, 548 P.2d 841 (Div. 1 1976).
Fla.—Department of Business Regulation, Div. of Florida Land Sales and Condominiums v. Smith, 471 So. 2d 138 (Fla. 1st DCA 1985).
Brokers' agreements
N.Y.—Traver v. Betts, 83 A.D.2d 653, 442 N.Y.S.2d 195 (3d Dep't 1981).
Claim of arbitrary enforcement insufficient
U.S.—Pope v. Mississippi Real Estate Com'n, 695 F. Supp. 253 (N.D. Miss. 1988), judgment aff'd, 872 F.2d 127, 13 Fed. R. Serv. 3d 694 (5th Cir. 1989).
Exemption
Fla.—Florida Real Estate Commission v. Johnson, 362 So. 2d 674 (Fla. 1978).
Revocation on leaving state
Fla.—Hall v. King, 266 So. 2d 33 (Fla. 1972).

4 U.S.—Payne v. State of Kansas ex rel. Brewster, 248 U.S. 112, 39 S. Ct. 32, 63 L. Ed. 153 (1918).
Mo.—Arnold v. Hanna, 315 Mo. 823, 290 S.W. 416 (1926), aff'd, 276 U.S. 591, 48 S. Ct. 212, 72 L. Ed. 721 (1928).

5 U.S.—Martinez v. Goddard, 521 F. Supp. 2d 1002 (D. Ariz. 2007).
Ariz.—Arizona State Tax Com'n v. Frank Harmonson Co. Metal Products, 63 Ariz. 452, 163 P.2d 667 (1945).
Cal.—Knapp Development & Design v. Pal-Mal Properties, Ltd., 173 Cal. App. 3d 423, 219 Cal. Rptr. 44 (2d Dist. 1985).
Discriminatory enforcement claim insufficient
Or.—Lumbreras v. Roberts, 319 F. Supp. 2d 1191 (D. Or. 2004), aff'd, 156 Fed. Appx. 952 (9th Cir. 2005).

6 Cal.—City and County of San Francisco v. Pace, 60 Cal. App. 3d 906, 132 Cal. Rptr. 151 (1st Dist. 1976).
N.J.—Becker v. Pickersgill, 105 N.J.L. 51, 143 A. 859 (N.J. Sup. Ct. 1928).

7 Ga.—Southeastern Elec. Co. v. City of Atlanta, 179 Ga. 514, 176 S.E. 400 (1934).
Wis.—City of Milwaukee v. Rissling, 184 Wis. 517, 199 N.W. 61 (1924), aff'd, 271 U.S. 644, 46 S. Ct. 484, 70 L. Ed. 1129 (1926).

8 Cal.—Forest Lawn Memorial Park Ass'n v. State Board of Embalmers and Funeral Directors, 134 Cal. App. 73, 24 P.2d 887 (3d Dist. 1933).
Pa.—Grime v. Department of Public Instruction, 324 Pa. 371, 188 A. 337 (1936).
Wis.—State ex rel. Kemplinger v. Whyte, 177 Wis. 541, 188 N.W. 607, 23 A.L.R. 67 (1922).

9 N.J.—McBride v. Clark, 101 N.J.L. 213, 101 N.J.L. 223, 2 N.J. Misc. 814, 127 A. 550 (Ct. Err. & App. 1925).
Va.—Cole v. Com., 169 Va. 868, 193 S.E. 517 (1937).

10 U.S.—Southeastern Express Co. v. Robertson, 264 U.S. 535, 44 S. Ct. 421, 68 L. Ed. 836 (1924).

11 Fla.—Peoples Bank of Indian River County v. State, Dept. of Banking and Finance, 395 So. 2d 521 (Fla. 1981).
Okla.—Citicorp Sav. and Trust Co. v. Banking Bd. of State of Okl., 1985 OK 63, 704 P.2d 490 (Okla. 1985).
Wash.—Financial Pacific Leasing, Inc. v. City of Tacoma, 113 Wash. 2d 143, 776 P.2d 136 (1989).
Branch banks
N.Y.—Cross County Sav. and Loan Ass'n v. Siebert, 93 Misc. 2d 609, 403 N.Y.S.2d 864 (Sup 1978).

12 U.S.—Bonacorsa v. Barry, 664 F.2d 346 (2d Cir. 1981).
Ariz.—Arizona Downs v. Arizona Horsemen's Foundation, 130 Ariz. 550, 637 P.2d 1053 (1981).
La.—Durham v. Louisiana State Racing Com'n, 458 So. 2d 1292 (La. 1984).
License application process
Tex.—Lone Star Greyhound Park, Inc. v. Texas Racing Com'n, 863 S.W.2d 742 (Tex. App. Austin 1993), writ denied, (Apr. 20, 1994).
Choice of season
Fla.—Hialeah Race Course, Inc. v. Gulfstream Park Racing Ass'n, 245 So. 2d 625 (Fla. 1971).
Discipline
N.J.—Wendling v. New Jersey Racing Com'n, 279 N.J. Super. 477, 653 A.2d 582 (App. Div. 1995).

13 U.S.—Robertson v. People of State of Cal., 328 U.S. 440, 66 S. Ct. 1160, 90 L. Ed. 1366 (1946).
Ill.—Economy Fire & Cas. Co. v. Thornsberry, 66 Ill. App. 3d 225, 23 Ill. Dec. 13, 383 N.E.2d 780 (5th Dist. 1978).
Mass.—Maryland Cas. Co. v. Commissioner of Ins., 372 Mass. 554, 363 N.E.2d 1087 (1977).
Wash.—National Motorists Ass'n v. Office of Com'r of Ins., 2002 WI App 308, 259 Wis. 2d 240, 655 N.W.2d 179 (Ct. App. 2002).

14 U.S.—Robertson v. People of State of Cal., 328 U.S. 440, 66 S. Ct. 1160, 90 L. Ed. 1366 (1946); Heller v. Ross, 682 F. Supp. 2d 797 (E.D. Mich. 2010).
Exemptions
Fla.—State, Dept. of Ins. v. Keys Title and Abstract Co., Inc., 741 So. 2d 599 (Fla. 1st DCA 1999).
Life insurance agents
Cal.—In re Carlson, 87 Cal. App. 584, 262 P. 792 (1st Dist. 1927).
Brokers and agents
Cal.—Marsh & McLennan of Cal., Inc. v. City of Los Angeles, 62 Cal. App. 3d 108, 132 Cal. Rptr. 796 (2d Dist. 1976).
Discipline
Minn.—Matter of Insurance Agents' Licenses of Kane, 473 N.W.2d 869 (Minn. Ct. App. 1991).

15 Va.—Flax v. City of Richmond, 189 Va. 273, 52 S.E.2d 250 (1949).
"Class of one" equal protection claim
A pawnbroker was not intentionally treated differently than the prior owner of the pawn business in applying for a pawnbroking license from the Indiana Department of Financial Institutions (DFI), as required to support the pawnbroker's "class of one" equal protection claim, despite claim that the DFI did not raise concerns about the prior owner's choice of a manager for the business, where, at the time of the prior owner's application, the DFI was not aware that the manager had been convicted of a felony or that the manager had lied during the prior application interview.
U.S.—Fares Pawn, LLC v. Indiana Dept. of Financial Institutions, 755 F.3d 839 (7th Cir. 2014).

16 U.S.—Russell v. Board of Plumbing Examiners of County of Westchester, 74 F. Supp. 2d 339 (S.D. N.Y. 1999), adhered to on reargument, 74 F. Supp. 2d 349, 45 Fed. R. Serv. 3d 624 (S.D. N.Y. 1999), aff'd, 1 Fed. Appx. 38 (2d Cir. 2001) and aff'd, 1 Fed. Appx. 38 (2d Cir. 2001).
Mo.—State ex rel. Lipps v. City of Cape Girardeau, 507 S.W.2d 376 (Mo. 1974).
Tex.—Mauldin v. Texas State Bd. of Plumbing Examiners, 94 S.W.3d 867 (Tex. App. Austin 2002).
Plumbing permit for contractors installing public water mains
Mo.—Eastern Missouri Laborers' Dist. Council v. City of St. Louis, 5 S.W.3d 600 (Mo. Ct. App. E.D. 1999).
17 U.S.—Ohio Oil Co. v. Conway, 281 U.S. 146, 50 S. Ct. 310, 74 L. Ed. 775 (1930).
Tex.—W. R. Davis, Inc. v. State, 176 S.W.2d 978 (Tex. Civ. App. Galveston 1943), judgment rev'd on other grounds, 142 Tex. 637, 180 S.W.2d 429 (1944).
18 Cal.—Park 'N Fly of San Francisco, Inc. v. City of South San Francisco, 188 Cal. App. 3d 1201, 234 Cal. Rptr. 23 (1st Dist. 1987).
Ga.—Nichols v. Pirkle, 202 Ga. 372, 43 S.E.2d 306 (1947).
Ill.—City of Chicago v. Ben Alpert, Inc., 368 Ill. 282, 13 N.E.2d 987 (1938).
19 U.S.—Great Northern Ry. Co. v. State of Washington, 300 U.S. 154, 57 S. Ct. 397, 81 L. Ed. 573 (1937).
Neb.—City of Lincoln v. Lincoln Gas & Elec. Light Co., 100 Neb. 182, 158 N.W. 962 (1916).
Tex.—Dallas Gas Co. v. State, 261 S.W. 1063 (Tex. Civ. App. Austin 1924), writ refused, (May 14, 1924).
Pipeline operators
Miss.—Coleman v. Trunkline Gas Co., 61 So. 2d 276 (Miss. 1952), suggestion of error sustained on other grounds, 218 Miss. 285, 63 So. 2d 73 (1953).
Vendors of utility business
N.Y.—MacDonald v. Browne, 294 N.Y. 263, 62 N.E.2d 63 (1945).
20 U.S.—Puget Sound Power & Light Co. v. City of Seattle, Wash., 291 U.S. 619, 54 S. Ct. 542, 78 L. Ed. 1025 (1934).
Ala.—Alabama Power Co. v. Cullman County Electric Membership Corporation, 234 Ala. 396, 174 So. 866 (1937), opinion adhered to on reh'g, 235 Ala. 694, 178 So. 919 (1938).
La.—State ex rel. Porterie v. H.L. Hunt, Inc., 182 La. 1073, 162 So. 777, 103 A.L.R. 9 (1935).
21 Ala.—Mobile Battle House v. City of Mobile, 262 Ala. 270, 78 So. 2d 642 (1955).
Fla.—Gaulden v. Kirk, 47 So. 2d 567 (Fla. 1950).
Transient room tax
Utah—Menlove v. Salt Lake County, 18 Utah 2d 203, 418 P.2d 227 (1966).
22 U.S.—Dog Pound, LLC v. City of Monroe, 913 F. Supp. 2d 426 (E.D. Mich. 2012), aff'd, 558 Fed. Appx. 589 (6th Cir. 2014).
Ala.—Ensley Seafood Five Points, LLC v. City of Birmingham, 98 So. 3d 1149 (Ala. Civ. App. 2012).
Colo.—In re Interrogatories of the Governor on Chapter 118, Sess.Laws 1935, 97 Colo. 587, 52 P.2d 663 (1935).
Mass.—Jewel Companies, Inc. v. Town of Burlington, 365 Mass. 274, 311 N.E.2d 539 (1974).
Pa.—Barrel of Monkeys, LLC v. Allegheny County, 39 A.3d 559 (Pa. Commw. Ct. 2012).
23 U.S.—American Real Estate Institute, Inc. v. Alabama Real Estate Commission, 605 F.2d 931 (5th Cir. 1979).
N.Y.—Monarski v. Alexandrides, 80 Misc. 2d 260, 362 N.Y.S.2d 976 (Sup 1974).
Pa.—Blanco v. Pennsylvania State Bd. of Private Licensed Schools, 718 A.2d 1283, 129 Ed. Law Rep. 1126 (Pa. Commw. Ct. 1998).
R.I.—State v. Conragan, 58 R.I. 313, 192 A. 752 (1937).
24 Cal.—People v. Hoshor, 92 Cal. App. 2d 250, 206 P.2d 882 (2d Dist. 1949).
Ga.—Pharr Road Inv. Co. v. City of Atlanta, 224 Ga. 752, 164 S.E.2d 803 (1968).
Mo.—Florida Realty, Inc. v. Kirkpatrick, 509 S.W.2d 114 (Mo. 1974).
25 Ala.—Bessemer Theatres v. City of Bessemer, 261 Ala. 632, 75 So. 2d 651 (1954).
Cal.—City of Stockton v. West Coast Theatres, Inc. of Northern California, 36 Cal. 2d 879, 222 P.2d 886 (1950).
S.C.—Wingfield v. South Carolina Tax Commission, 147 S.C. 116, 144 S.E. 846 (1928).
Rated "X" movie houses
Ga.—Coleman v. Bradford, 238 Ga. 505, 233 S.E.2d 764 (1977).
Revocation

Colo.—O'Connor v. City and County of Denver, 894 F.2d 1210 (10th Cir. 1990).

26 Fla.—Harrell v. Schleman, 160 Fla. 544, 36 So. 2d 431 (1948).

Mo.—Edmonds v. City of St. Louis, 348 Mo. 1063, 156 S.W.2d 619 (1941).

Wash.—Canteen Service, Inc. v. City of Seattle, 77 Wash. 2d 870, 467 P.2d 845 (1970).

27 U.S.—Peet Stock Remedy Co. v. McMullen, 32 F.2d 669 (C.C.A. 8th Cir. 1929).

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16C C.J.S. Constitutional Law § 1534

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

c. Particular Occupations, Trades, Businesses, or Professions

(1) Occupations, Trades, or Businesses

§ 1534. Barbers, cosmetologists, and massage practitioners

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3685, 3703

A state may make reasonable classifications, which do not deny equal protection in laws licensing barbers, cosmetologists, and practitioners of massage.

A state may make reasonable classifications, which do not deny equal protection in laws licensing barbers,[1] cosmetologists,[2] and practitioners of massage.[3] Such laws are not made invalid by provisions for reasonable exemptions from their licensing requirements.[4]

Where, however, such a licensing law creates an unreasonable classification which is arbitrary and lacking in a rational relationship to a legitimate state purpose, it violates the Equal Protection Clause.[5] For example, a law which precludes persons licensed as barbers, hairdressers, or cosmetologists from performing their services on one sex has been held to deny equal protection[6] although a similar restriction has been upheld as to practitioners of massage.[7]

CUMULATIVE SUPPLEMENT

Cases:

African-style hair braiders' equal protection rights were not violated by Missouri statute requiring African-style hair braiders to be licensed as barbers or cosmetologists; statute was rationally related to Missouri's legitimate interests in protecting consumers and ensuring public health and safety, in light of evidence of risks associated with braiding, including hair loss and scalp infection. U.S. Const. Amend. 14; Mo. Ann. Stat. § 329.030. Ndioba Niang v. Carroll, 879 F.3d 870 (8th Cir. 2018).

Prosecution of defendant, a board of education clerk, for official misconduct and theft by unlawful taking, based on her conduct in taking confidential documents, in violation of board policy, for use in her discrimination litigation against board, did not violate due process under the doctrine of fundamental fairness; court rules provided defendant the opportunity to properly obtain relevant documents in support of her civil claim, and anti-discrimination policy of the Law Against Discrimination (LAD) did not immunize employees from prosecution for the taking of employer documents. U.S.C.A. Const.Amend. 14; N.J.S.A. 2C:30–2, 2C:20–3, 10:5–12. State v. Saavedra, 222 N.J. 39, 117 A.3d 1169 (2015).

[END OF SUPPLEMENT]

Footnotes

1 Iowa—Green v. Shama, 217 N.W.2d 547 (Iowa 1974).
Wis.—Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing, 87 Wis. 2d 175, 274 N.W.2d 618 (1979).

2 Cal.—Bone v. State Bd. of Cosmetology, 275 Cal. App. 2d 851, 80 Cal. Rptr. 164 (2d Dist. 1969).
Wis.—Laufenberg v. Cosmetology Examining Bd. of Wisconsin Dept. of Regulation and Licensing, 87 Wis. 2d 175, 274 N.W.2d 618 (1979).

3 U.S.—Pollard v. Cockrell, 578 F.2d 1002 (5th Cir. 1978).
Alaska—Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980).
Colo.—Regency Services Corp. v. Board of County Com'rs of Adams County, 819 P.2d 1049 (Colo. 1991).
Me.—Danish Health Club, Inc. v. Town of Kittery, 562 A.2d 663 (Me. 1989).
Minimum level of scrutiny
Wash.—Myrick v. Board of Pierce County Com'rs, 102 Wash. 2d 698, 677 P.2d 140 (1984), opinion amended on other grounds, 102 Wash. 2d 698, 687 P.2d 1152 (1984).
Class of one equal protection claim
An applicant for a license to operate a therapeutic massage business failed to show that a city's denial of its application lacked a rational basis, as would support its class of one equal protection claim against the city, alleging that the city had improperly denied its application by selectively enforcing the ordinance, where the applicant had operated without a license despite having been notified nearly 10 months before opening that licensure was required, it operated without a license after being visited by a code enforcement officer at least twice, and none of the massage therapists employed by the applicant were licensed.
U.S.—Carpman Fitness, LLC v. City Of Royal Oak, 681 F. Supp. 2d 836 (E.D. Mich. 2009).

4 U.S.—United Health Clubs of America, Inc. v. Strom, 423 F. Supp. 761 (D.S.C. 1976).
Md.—Massage Parlors, Inc. v. Mayor and City Council of Baltimore, 284 Md. 490, 398 A.2d 52 (1979).
Others performing massage
Ill.—Wes Ward Enterprises, Ltd. v. Andrews, 42 Ill. App. 3d 458, 355 N.E.2d 131 (3d Dist. 1976).
Me.—Danish Health Club, Inc. v. Town of Kittery, 562 A.2d 663 (Me. 1989).

5 U.S.—City of New Brunswick v. Zimmerman, 79 F.2d 428 (C.C.A. 3d Cir. 1935).

Colo.—Hide-A-Way Massage Parlor, Inc. v. Board of County Com'rs of Adams County, 198 Colo. 175, 597 P.2d 564 (1979).

W. Va.—Thorne v. Roush, 164 W. Va. 165, 261 S.E.2d 72 (1979).

Records

U.S.—Pentco, Inc. v. Moody, 474 F. Supp. 1001, 16 Ohio Op. 3d 189 (S.D. Ohio 1978).

Dual licensing

U.S.—Martineau v. Ghezzi, 389 F. Supp. 187 (N.D. N.Y. 1974).

6 U.S.—Tuozzoli v. Killian, 386 F. Supp. 9 (D. Conn. 1974); Bolton v. Texas Bd. of Barber Examiners, 350 F. Supp. 494 (N.D. Tex. 1972), judgment aff'd, 409 U.S. 807, 93 S. Ct. 52, 34 L. Ed. 2d 68 (1972).

Mich.—People v. McDonald, 67 Mich. App. 64, 240 N.W.2d 268 (1976).

Equal protection guaranty as applied to discrimination by reason of sex, generally, see §§ 1298 to 1315.

7 Nev.—Techtow v. City Council of North Las Vegas, 105 Nev. 330, 775 P.2d 227 (1989).

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

c. Particular Occupations, Trades, Businesses, or Professions

(1) Occupations, Trades, or Businesses

§ 1535. Merchants

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3701

Occupation taxes based on reasonable classifications may be imposed on merchants without contravening the guaranty of equal protection.

The requirement of equal protection of the laws must be observed in the imposition of occupation license taxes on dealers in merchandise, such as hawkers and peddlers,[1] but such taxes are not forbidden by the constitutional provision if based on a reasonable classification and applying alike to all merchants similarly situated.[2] Accordingly, for purposes of exemption or imposing different rates of taxes, merchants may be subclassified,[3] for example, as wholesaler and retailer;[4] peddlers or itinerant dealers, and merchants having a permanent place of business;[5] or sellers of merchandise produced by them and sellers of merchandise not so produced.[6]

Merchants may be classified, and excise taxes imposed, according to the specific commodities in which they deal.[7] However, arbitrary distinctions between dealers similarly situated render the license act or ordinance invalid.[8]

A license tax on the sale of merchandise may constitutionally be based on the wholesale price even though some retailers pay higher wholesale prices than others for the same goods.[9] The license tax may also constitutionally be based on the number of hours a week of operation,[10] as well as on the amount of equipment in the store.[11] The constitutional requirement of equal protection is not violated by a reasonable provision for a graduation of the tax according to the amount of sales,[12] but a statute which imposes a gross sales tax on a graduated scale increasing in proportion with the increase in the amount of sales, even though considered as an excise on the privilege of merchandising at retail, is unconstitutional.[13]

Origin of goods.

A statute or ordinance is invalid which discriminates against a dealer in merchandise because of its origin in another state[14] or outside the municipality.[15] Similarly, the legislature has no power to require a license for the peddling of goods only where they are manufactured in the state.[16]

Grandfather clause.

A grandfather clause in a used car dealership licensing ordinance, permitting a license to issue even if the dealership does not meet distance requirements, where the property has previously served as the location of a used car dealership, is not irrational in violation of equal protection.[17]

Footnotes

1 U.S.—Healy v. Ratta, 67 F.2d 554 (C.C.A. 1st Cir. 1933), rev'd on other grounds, 292 U.S. 263, 54 S. Ct. 700, 78 L. Ed. 1248 (1934).
Ill.—Marallis v. City of Chicago, 349 Ill. 422, 182 N.E. 394, 83 A.L.R. 1222 (1932).
Mass.—Com. v. Gordon, 354 Mass. 722, 242 N.E.2d 399 (1968).

2 Ill.—Reif v. Barrett, 355 Ill. 104, 188 N.E. 889 (1933) (overruled in part on other grounds by, Thorpe v. Mahin, 43 Ill. 2d 36, 250 N.E.2d 633 (1969)).
Merchant advertising sale
Ala.—State v. Kartus, 230 Ala. 352, 162 So. 533, 101 A.L.R. 1336 (1935).
Vendors on trains
Ga.—Interstate Co. v. Richardson, 177 Ga. 9, 169 S.E. 373 (1933).

3 Tex.—Hurt v. Cooper, 130 Tex. 433, 110 S.W.2d 896 (1937).

4 Ala.—State v. Pure Oil Co., 256 Ala. 534, 55 So. 2d 843 (1951).
Ill.—Modern Dairy Co. v. Department of Revenue, 413 Ill. 55, 108 N.E.2d 8 (1952).
N.Y.—O'Gara v. Joseph, 202 Misc. 28, 115 N.Y.S.2d 469 (Sup 1952).
Discount on tax stamps to wholesalers
Tenn.—Great Atlantic & Pacific Tea Co. v. McCanless, 178 Tenn. 354, 157 S.W.2d 843 (1942).
Tobacco dealers
Minn.—Mississippi State Tax Commission v. Flora Drug Co., 167 Miss. 1, 148 So. 373 (1933).

5 U.S.—Caskey Baking Co. v. Commonwealth of Virginia, 313 U.S. 117, 61 S. Ct. 881, 85 L. Ed. 1223 (1941).
Ala.—American Bakeries Co. v. City of Huntsville, 232 Ala. 612, 168 So. 880 (1936).
Fla.—State ex rel. Lawson v. Woodruff, 134 Fla. 437, 184 So. 81 (1938).
Canvassers for magazines
Cal.—In re Albrecht, 25 Cal. App. 2d 750, 76 P.2d 713 (3d Dist. 1938).

Employee of licensed corporation

Iowa—State v. Logsdon, 215 Iowa 1297, 248 N.W. 4 (1933).

Health regulation

Tex.—Ex parte Baker, 127 Tex. Crim. 589, 78 S.W.2d 610 (1934).

6 Mich.—Ritter v. City of Pontiac, 276 Mich. 416, 267 N.W. 641 (1936).

Or.—Cancilla v. Gehlhar, 145 Or. 184, 27 P.2d 179 (1933).

Tex.—Mims v. City of Fort Worth, 61 S.W.2d 539 (Tex. Civ. App. Fort Worth 1933).

Manufacturers selling at place of manufacture properly exempted

U.S.—Armour & Co. v. Commonwealth of Virginia, 246 U.S. 1, 38 S. Ct. 267, 62 L. Ed. 547 (1918).

7 U.S.—A. Magnano Co. v. Hamilton, 292 U.S. 40, 54 S. Ct. 599, 78 L. Ed. 1109 (1934).

Ill.—Director of Illinois Dept. of Agriculture v. Carroll Feed Service, Inc., 83 Ill. App. 3d 164, 38 Ill. Dec. 531, 403 N.E.2d 762 (2d Dist. 1980).

N.Y.—Matosin v. City of New York, 203 Misc. 973, 117 N.Y.S.2d 532 (Sup 1952).

Liquor

U.S.—Jung v. City of Winona, 71 F. Supp. 558 (D. Minn. 1947).

Ga.—State v. Golia, 235 Ga. 791, 222 S.E.2d 27 (1976).

Tobacco products

U.S.—Matter of F. W. Koenecke & Sons, Inc., 533 F.2d 1020 (7th Cir. 1976).

Ill.—S. Bloom, Inc. v. Mahin, 61 Ill. 2d 70, 329 N.E.2d 213 (1975).

Neb.—Sandberg v. State, 188 Neb. 335, 196 N.W.2d 501 (1972).

8 Cal.—Barker Bros. v. City of Los Angeles, 10 Cal. 2d 603, 76 P.2d 97 (1938).

Ga.—City of Douglas v. South Georgia Grocery Co., 180 Ga. 519, 179 S.E. 768, 99 A.L.R. 700 (1935).

Ky.—Com'rs of Sinking Fund of City of Louisville v. Weis, 269 Ky. 554, 108 S.W.2d 515 (1937).

Milk produced outside state

N.J.—Borden's Farm Products of N. J. v. Board of Health of Borough of Somerville, 36 N.J. Super. 104, 114 A.2d 788 (Law Div. 1955).

9 Ala.—Exchange Drug Co. v. State Tax Commission, 218 Ala. 115, 117 So. 673 (1928).

10 Ga.—Ard v. City of Macon, 187 Ga. 127, 200 S.E. 678 (1938).

11 Ga.—Ard v. City of Macon, 187 Ga. 127, 200 S.E. 678 (1938).

12 Ala.—Nachman v. State Tax Commission, 233 Ala. 628, 173 So. 25 (1937).

Ariz.—Stults Eagle Drug Co. v. Luke, 48 Ariz. 467, 62 P.2d 1126 (1936).

Miss.—Harry D. Kantor & Son v. Stone, 203 Miss. 260, 34 So. 2d 492 (1948).

Classification according to amount of business, generally, see § 1527.

Collection from consumer

Cal.—Roth Drugs v. Johnson, 13 Cal. App. 2d 720, 57 P.2d 1022 (3d Dist. 1936).

13 U.S.—Stewart Dry Goods Co. v. Lewis, 294 U.S. 550, 55 S. Ct. 525, 79 L. Ed. 1054 (1935).

Vt.—Great Atlantic & Pacific Tea Co. v. Harvey, 107 Vt. 215, 177 A. 423 (1935).

Application of equal protection guaranty to sales taxes, generally, see §§ 1518, 1519.

14 Fla.—Ex parte Smith, 100 Fla. 1, 128 So. 864 (1930).

Application process

U.S.—Lanierland Distributors, Inc. v. Strickland, 544 F. Supp. 747 (N.D. Ga. 1982).

15 Ill.—Kiel v. City of Chicago, 176 Ill. 137, 52 N.E. 29 (1898).

Ohio—Sipe v. Murphy, 49 Ohio St. 536, 31 N.E. 884 (1892).

16 Vt.—State v. Hoyt, 71 Vt. 59, 42 A. 973 (1899).

17 U.S.—Lindquist v. City of Pasadena Texas, 669 F.3d 225 (5th Cir. 2012).

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16C C.J.S. Constitutional Law § 1536

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§ 1536. Merchants—Chain stores

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3687

A state may separately classify for taxation the conduct of a chain store and may increase the rate in proportion to the increase in the number of stores within the state, without contravening the equal protection guaranty.

Without contravening the Equal Protection Clause of the Fourteenth Amendment, a state may separately classify for taxation the conduct of a chain store[1] and may increase the rate in proportion to the increase in the number of stores within the state[2] and make the tax so heavy as to discourage multiplication of units to an extent believed to be inordinate.[3]

A statute imposing a tax on units within the state basing the rate per unit on the total number of units within and without the state is not unconstitutional in view of the competitive advantage obtained by each store in the chain on the addition of other units;[4] but an increase based on the mere fact that the stores are located in different counties, being unrelated to the character

or size of the chain, is arbitrary, and the statute imposing it invalid,[5] and so is a statute which imposes a tax based on gross receipts from sales according to an accumulative graduated scale.[6]

A statute or ordinance which discriminates between chain stores as a class,[7] as by taxing the business of operating one of a chain comprising more than a specified number of stores and not imposing the tax where the chain is a smaller one,[8] is likewise unconstitutional. The constitutionality of a chain store license tax may be attacked even though the chain store attacking the tax does not point to any other particular business operation as receiving favored or preferential treatment.[9]

A chain store tax act does not violate the constitutional provision solely because by its express terms it exempts from its operation certain classes of businesses or stores,[10] such as gasoline filling stations,[11] particularly where the operation of such stations is taxed under other acts.[12]

A graduated tax duly authorized by state authority and based on the number of stores situated in the taxing area is valid when levied by a county[13] or municipality.[14]

Footnotes

1 U.S.—Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S. Ct. 772, 81 L. Ed. 1193, 112 A.L.R. 293 (1937).
Miss.—Interco, Inc. v. Rhoden, 220 So. 2d 290 (Miss. 1969).
N.J.—Ring v. Mayor and Council of Borough of North Arlington, 136 N.J.L. 494, 56 A.2d 744 (N.J. Sup. Ct. 1948), judgment aff'd, 1 N.J. 24, 61 A.2d 508 (1948).

2 U.S.—Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S. Ct. 772, 81 L. Ed. 1193, 112 A.L.R. 293 (1937).
Fla.—State ex rel. Lane Drug Stores v. Simpson, 122 Fla. 582, 166 So. 227 (1935), adhered to on reh'g, 122 Fla. 670, 166 So. 262 (1936).
Tex.—Hurt v. Cooper, 130 Tex. 433, 110 S.W.2d 896 (1937).
Factors affecting classification as chain store
Md.—Fair Lanes, Inc. v. Comptroller of Treasury, 265 Md. 361, 289 A.2d 595 (1972).

3 U.S.—Fox v. Standard Oil Co. of New Jersey, 294 U.S. 87, 55 S. Ct. 333, 79 L. Ed. 780 (1935).

4 **Objections held untenable**
Such a tax has been upheld as against the objections that it arbitrarily discriminated in favor of local, as against national, chains; that it disregarded the value of the local privilege by taking into account all units indiscriminately in fixing the rate, notwithstanding sales and earnings of individual stores of a chain differ in various portions of country; and that another method more nicely adjusted to represent differences in earning power of individual stores might have been chosen.
U.S.—Great Atlantic & Pacific Tea Co. v. Grosjean, 301 U.S. 412, 57 S. Ct. 772, 81 L. Ed. 1193, 112 A.L.R. 293 (1937).

5 U.S.—Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

6 U.S.—Valentine v. Great Atlantic & Pacific Tea Co., 299 U.S. 32, 57 S. Ct. 56, 81 L. Ed. 22 (1936).
Fla.—State ex rel. Adams v. Lee, 122 Fla. 639, 166 So. 249 (1935), adhered to on reh'g, 122 Fla. 670, 166 So. 262 (1936).

7 Ga.—City of Douglas v. South Georgia Grocery Co., 180 Ga. 519, 179 S.E. 768, 99 A.L.R. 700 (1935).

8 Ga.—City of Douglas v. South Georgia Grocery Co., 180 Ga. 519, 179 S.E. 768, 99 A.L.R. 700 (1935).
N.C.—Great Atlantic & Pacific Tea Co. v. Doughton, 196 N.C. 145, 144 S.E. 701 (1928).

9 Md.—Fair Lanes, Inc. v. Comptroller of Treasury, 265 Md. 361, 289 A.2d 595 (1972).

10 U.S.—Great Atlantic & Pacific Tea Co. v. Valentine, 12 F. Supp. 760 (S.D. Iowa 1935), aff'd, 299 U.S. 32, 57 S. Ct. 56, 81 L. Ed. 22 (1936).

Tex.—Hurt v. Cooper, 113 S.W.2d 929 (Tex. Civ. App. Dallas 1938).

11 U.S.—Southern Grocery Stores v. South Carolina Tax Commission, 55 F.2d 931 (E.D. S.C. 1932).
Idaho—J.C. Penney Co. v. Diefendorf, 54 Idaho 374, 32 P.2d 784 (1934).

12 U.S.—Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

13 U.S.—Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).

14 U.S.—Louis K. Liggett Co. v. Lee, 288 U.S. 517, 53 S. Ct. 481, 77 L. Ed. 929, 85 A.L.R. 699 (1933).
Or.—Safeway Stores v. City of Portland, 149 Or. 581, 42 P.2d 162 (1935).

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16C C.J.S. Constitutional Law § 1537

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(1) Occupations, Trades, or Businesses

§ 1537. Merchants—Liquor licenses

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3695

States may make reasonable classifications when granting, suspending, revoking, or transferring liquor licenses but, in so doing, must comply with the constraints of the equal protection clause.

The State, in granting, suspending, revoking, or transferring licenses for the sale and dispensation of liquor, must comply with the constraints of the Equal Protection Clause;[1] however, the privilege of selling liquor is not a fundamental right so that the regulation of liquor licenses must only satisfy the rational relationship test.[2] Therefore, liquor license laws which limit the granting of licenses,[3] favor a certain group of applicants in the granting of licenses,[4] impose different rates for liquor licenses,[5] restrict the transfer of licenses,[6] or provide for suspensions or revocations thereof[7] do not violate the equal protection guaranty if they make reasonable classifications that are not arbitrary and which rest on a rational basis.

On the other hand, classifications made by liquor license laws which are arbitrary, unreasonable, or do not rest on a rational basis,[8] or refusals to issue liquor licenses where the prescribed standards for obtaining them have been met,[9] violate the Equal Protection Clause.

States may, without denying equal protection, regulate the location of establishments selling or dispensing alcoholic beverages by denying licenses in certain areas as long as the laws are standard, reasonably certain, and not arbitrary.[10] Some authorities have held that statutes may prohibit establishments from selling or dispensing liquor within a specified distance from specifically designated institutions,[11] even though licenses granted prior to the time such laws go into effect are retained;[12] but other authorities have held that allowing persons licensed prior to such a statute's effective date to retain and renew their liquor licenses is arbitrary and not reasonably related to such statute's legislative purpose and therefore violates equal protection.[13] Likewise, some authorities hold that laws denying liquor licenses for establishments within a specified distance from a residential dwelling, if the owner of the residence objects, do not violate equal protection[14] while other authorities hold that such laws do violate equal protection.[15] Licensing statutes requiring increased distance between liquor stores in certain types of areas than between liquor stores within other types of areas have been upheld.[16]

The Equal Protection Clause is not violated by all wine distributors having to pay the same tax on wine coolers.[17]

CUMULATIVE SUPPLEMENT

Cases:

Indiana statutory scheme that governs beer dealers does not distinguish between grocery and convenience stores in incorporated and unincorporated areas; all are treated the same, and thus statute does not violate the Equal Protection Clause of the Fourteenth Amendment. U.S.C.A. Const.Amends. 14; West's A.I.C. §§ 7.1–3–4–4, 7.1–5–10–11. Indiana Petroleum Marketers and Convenience Store Ass'n v. Cook, 808 F.3d 318 (7th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Maxwell's Pic-Pac, Inc. v. Dehner, 739 F.3d 936 (6th Cir. 2014); HSH, Inc. v. City of El Cajon, 44 F. Supp. 3d 996 (S.D. Cal. 2014).
Fla.—Castlewood Intern. Corp. v. Wynne, 294 So. 2d 321 (Fla. 1974).
Ga.—City of Atlanta v. Hill, 238 Ga. 413, 233 S.E.2d 193 (1977).
Okla.—Bittle v. Bahe, 2008 OK 10, 192 P.3d 810 (Okla. 2008) (overruled on other grounds by, Sheffer v. Buffalo Run Casino, PTE, Inc., 2013 OK 77, 315 P.3d 359 (Okla. 2013)).
No violation absent showing or allegation of discriminatory intent
Idaho—Henson v. Department of Law Enforcement, 107 Idaho 19, 684 P.2d 996 (1984).

2 U.S.—Coolman v. Robinson, 452 F. Supp. 1324 (N.D. Ind. 1978).
Minn.—Federal Distillers, Inc. v. State, 304 Minn. 28, 229 N.W.2d 144 (1975).
S.D.—Crowley v. State, 268 N.W.2d 616 (S.D. 1978).

3 U.S.—Maxwell's Pic-Pac, Inc. v. Dehner, 739 F.3d 936 (6th Cir. 2014).
Ga.—Tipton v. City of Dudley, 242 Ga. 807, 251 S.E.2d 545 (1979).
Mass.—Johnson v. Martignetti, 374 Mass. 784, 375 N.E.2d 290 (1978).
Beer importation license
U.S.—Lanierland Distributors, Inc. v. Strickland, 544 F. Supp. 747 (N.D. Ga. 1982).

B-girls
Fla.—Shevin v. Bocaccio, Inc., 379 So. 2d 105 (Fla. 1979).
La.—Burnette v. Louisiana Bd. of Alcoholic Beverage Control, 252 So. 2d 346 (La. Ct. App. 4th Cir. 1971).
Drugstore
Ill.—Pence v. Village of Rantoul, 12 Ill. App. 3d 446, 298 N.E.2d 775 (4th Dist. 1973).
Liquor license grantees
R.I.—C. Tisdall Co. v. Board of Aldermen of City of Newport, 57 R.I. 96, 188 A. 648 (1936).
Residency requirement
U.S.—Coolman v. Robinson, 452 F. Supp. 1324 (N.D. Ind. 1978).
Wholesale and retail licenses
Mass.—Opinion of the Justices to the House of Representatives, 368 Mass. 857, 333 N.E.2d 414 (1975).
Mich.—Borman's, Inc. v. Michigan Liquor Control Commission, 37 Mich. App. 738, 195 N.W.2d 316 (1972).

4 Ga.—Consolidated Government of Columbus v. Barwick, 274 Ga. 176, 549 S.E.2d 73 (2001).

5 Ariz.—Kaufman v. City of Tucson, 6 Ariz. App. 429, 433 P.2d 282 (1967).
Hotel and restaurants
Colo.—Springston v. City of Fort Collins, 184 Colo. 126, 518 P.2d 939 (1974).

6 Ga.—Illusions on Peachtree Street, Inc. v. Young, 257 Ga. 142, 356 S.E.2d 510 (1987).
Need to show malice or some other impermissible consideration
U.S.—Harron v. Town of Franklin, 660 F.3d 531 (1st Cir. 2011).

7 U.S.—Woods v. Alcoholic Beverage Appeals Bd., 502 F. Supp. 528 (C.D. Cal. 1980).
D.C.—Meteor Corp. v. District of Columbia Alcoholic Beverage Control Bd., 316 A.2d 545 (D.C. 1974).
Neb.—Major Liquors, Inc. v. City of Omaha, 188 Neb. 628, 198 N.W.2d 483 (1972).

8 Ga.—Hernandez v. Board of Com'rs of Camden County, 242 Ga. 76, 247 S.E.2d 870 (1978).
Me.—Opinion of the Justices, 402 A.2d 601 (Me. 1979).
Mich.—DeRose v. City of Lansing, 13 Mich. App. 238, 163 N.W.2d 839 (1968).
Irrational classifications or invidious discriminations
Neb.—Gas'N Shop, Inc. v. Nebraska Liquor Control Com'n, 229 Neb. 530, 427 N.W.2d 784 (1988).
Aliens
Ariz.—Arizona State Liquor Bd. of Dept. of Liquor Licenses and Control v. Ali, 27 Ariz. App. 16, 550 P.2d 663 (Div. 2 1976).
On-premises sales
Wis.—State ex rel. Grand Bazaar Liquors, Inc. v. City of Milwaukee, 105 Wis. 2d 203, 313 N.W.2d 805 (1982).

9 Ga.—S & C, Inc. v. City of Forest Park, 255 Ga. 339, 338 S.E.2d 279 (1986).

10 U.S.—Trustees of Mortg. Trust of America v. Holland, 554 F.2d 237 (5th Cir. 1977).
Fla.—ABC Liquors, Inc. v. City of Ocala, 366 So. 2d 146 (Fla. 1st DCA 1979).
Idaho—State v. Cantrell, 94 Idaho 653, 496 P.2d 276 (1972).

11 S.D.—Crowley v. State, 268 N.W.2d 616 (S.D. 1978).

12 U.S.—Sandbach v. City of Valdosta, 526 F.2d 1259 (5th Cir. 1976).

13 Ala.—Swann v. City of Graysville, 367 So. 2d 952 (Ala. 1979).

14 Tenn.—Davis v. Blount County Beer Bd., 621 S.W.2d 149 (Tenn. 1981).

15 Ga.—Bozik v. Cobb County, 240 Ga. 537, 242 S.E.2d 48 (1978).

16 Del.—Prices Corner Liquors, Inc. v. Delaware Alcoholic Beverage Control Com'n, 705 A.2d 571 (Del. 1998).
Ga.—Consolidated Government of Columbus v. Barwick, 274 Ga. 176, 549 S.E.2d 73 (2001).

17 Wash.—Cosro, Inc. v. Liquor Control Bd., 107 Wash. 2d 754, 733 P.2d 539 (1987).

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16C C.J.S. Constitutional Law § 1538

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§ 1538. Motor carriers and transportation agents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686

Reasonable occupation taxes may be imposed on motor carriers and transportation agents without contravening the constitutional provisions as to equal protection.

Courts have, under the Equal Protection Clause, upheld legislation providing for the licensing of, and the imposition of license fees or taxes on, motor carriers[1] as well as like legislation with respect to motor transportation agents[2] and have likewise held other legislation unconstitutional as denying the equal protection of the laws to such carriers[3] or agents.[4] A statute taxing motor carriers may properly be confined to carriers of a particular class, such as carriers with fixed termini[5] or carriers doing an intercity business.[6]

For purposes of imposing different rates of taxation or creating exemptions, carriers may be subdivided into particular classes,[7] such as those who operate wholly within a municipality,[8] private carriers operating within a specified distance from

their established place of business[9] or solely between points without railroad facilities and not passing through or beyond municipalities having such facilities,[10] taxicab drivers,[11] farmers transporting their own products and supplies to and from market,[12] carriers of agricultural products[13] or the like,[14] or public carriers engaged in transporting school children,[15] mail,[16] or newspapers.[17] However, an exemption of certain carriers from such a tax which lacks a rational basis, is arbitrary, or unreasonably discriminates violates the Equal Protection Clause.[18]

Subject to the general requirements of such a tax, the tax may be graduated;[19] and taxes graduated according to the gross earnings of the carrier,[20] the number of miles traveled in the state,[21] or the seating capacity of buses,[22] or the distance of hauls,[23] have been held not to contravene the constitutional provision. Statutory provisions for the suspension of licenses for the violation of highway regulations have been held not to violate the Equal Protection Clause.[24]

Footnotes

1 Ariz.—Shaw v. State, 8 Ariz. App. 447, 447 P.2d 262 (1968).
Ark.—U-Drive-Em Corp. v. Wiseman, 189 Ark. 1163, 76 S.W.2d 960 (1934).
Ky.—American Trucking Ass'n, Inc. v. Com., Transp. Cabinet, 676 S.W.2d 785 (Ky. 1984).

2 Tenn.—Bowen v. Hannah, 167 Tenn. 451, 71 S.W.2d 672 (1934).
Highways not served by certified carriers
Cal.—People v. Henry, 131 Cal. App. 82, 21 P.2d 672 (2d Dist. 1933).

3 U.S.—Smith v. Cahoon, 283 U.S. 553, 51 S. Ct. 582, 75 L. Ed. 1264 (1931).
N.H.—State v. Moore, 91 N.H. 16, 13 A.2d 143 (1940).
N.J.—Motor Cargo v. Division of Tax Appeals, Dept. of Treasury, 10 N.J. 580, 92 A.2d 774 (1952).

4 Or.—U. S. Automobile Service Club v. Van Winkle, 128 Or. 274, 274 P. 308 (1929).

5 U.S.—Johnson Transfer & Freight Lines v. Perry, 47 F.2d 900 (N.D. Ga. 1931).

6 Okla.—Pure Oil Co. v. Oklahoma Tax Commission, 1936 OK 516, 179 Okla. 479, 66 P.2d 1097 (1936).

7 La.—Matthews v. Conway, 179 La. 875, 155 So. 255 (1934).
Miss.—Hudson v. Stuart, 166 Miss. 339, 145 So. 611 (1933).
Hauling of overlength loads
Mo.—Park Transp. Co. v. Missouri State Highway Com'n, 332 Mo. 592, 60 S.W.2d 388 (1933).

8 U.S.—Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).
Mo.—State ex rel. Illinois Greyhound Lines v. Public Service Com'n, 341 Mo. 190, 108 S.W.2d 116, 115 A.L.R. 1097 (1937).
Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).

9 U.S.—Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

10 U.S.—Aero Mayflower Transit Co. v. Georgia Public Serv. Com'n, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935).

11 Ark.—Potts v. McCastlain, 240 Ark. 654, 401 S.W.2d 220 (1966).
Cal.—Luxor Cab Co. v. Cahill, 21 Cal. App. 3d 551, 98 Cal. Rptr. 576 (1st Dist. 1971).
Mich.—Kon v. City of Ann Arbor, 41 Mich. App. 307, 199 N.W.2d 874 (1972).

12 U.S.—Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

13 U.S.—Aero Mayflower Transit Co. v. Georgia Public Serv. Com'n, 295 U.S. 285, 55 S. Ct. 709, 79 L. Ed. 1439 (1935).
N.D.—Figenskau v. McCoy, 66 N.D. 290, 265 N.W. 259 (1936).
Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).

14 Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).

Logs, lumber, and cotton

Okla.—Pure Oil Co. v. Oklahoma Tax Commission, 1936 OK 516, 179 Okla. 479, 66 P.2d 1097 (1936).

15 U.S.—Continental Baking Co. v. Woodring, 286 U.S. 352, 52 S. Ct. 595, 76 L. Ed. 1155, 81 A.L.R. 1402 (1932).

Ind.—Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).

16 Ind.—Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).

17 Ind.—Kelly v. Finney, 207 Ind. 557, 194 N.E. 157 (1935).

18 **Carrier of general commodities**

Mont.—Garrett Freightlines, Inc. v. Montana R. R. and Public Service Commission, 161 Mont. 482, 507 P.2d 1040 (1973).

19 N.C.—Clark v. Maxwell, 197 N.C. 604, 150 S.E. 190 (1929), aff'd, 282 U.S. 811, 51 S. Ct. 211, 75 L. Ed. 726 (1931).

20 U.S.—Prouty v. Coyne, 55 F.2d 289 (D.S.D. 1932), decree rev'd on other grounds, 289 U.S. 704, 53 S. Ct. 658, 77 L. Ed. 1461 (1933).

Pa.—Shirks Motor Exp. Corp. v. Messner, 375 Pa. 450, 100 A.2d 913 (1953).

21 U.S.—Alkazin v. Wells, 47 F.2d 904 (S.D. Fla. 1900).

Ton mile tax

Wis.—Hillside Transit Co. v. Larson, 265 Wis. 568, 62 N.W.2d 722 (1954).

Requirement of deposit

U.S.—Johnson Transfer & Freight Lines v. Perry, 47 F.2d 900 (N.D. Ga. 1931).

22 S.D.—State v. Black Hills Transp. Co., 71 S.D. 28, 20 N.W.2d 683 (1945).

23 N.C.—Clark v. Maxwell, 197 N.C. 604, 150 S.E. 190 (1929), aff'd, 282 U.S. 811, 51 S. Ct. 211, 75 L. Ed. 726 (1931).

24 Ill.—Hayes Freight Lines, Inc. v. Castle, 2 Ill. 2d 58, 117 N.E.2d 106 (1954), judgment aff'd, 348 U.S. 61, 75 S. Ct. 191, 99 L. Ed. 68 (1954).

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

c. Particular Occupations, Trades, Businesses, or Professions

(2) Professions

§ 1539. Licenses and license or occupational taxes regarding professions, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3683, 3688, 3696, 3699

Licenses to practice a profession may be granted or withheld based on reasonable classifications, but a state may not exclude a person from a profession in a manner or for a reason which contravenes the Equal Protection Clause.

The right to make a living by practicing the profession in which one has been trained and qualified is not a fundamental right.[1] Therefore, reasonable classifications in laws regarding the licensing of professions, such as those concerning licensing of accountants;[2] engineers;[3] chiropractors;[4] dentists, denturists, and dental hygienists;[5] doctors of medicine or other practitioners of healing arts;[6] opticians;[7] and optometrists[8] do not violate the Equal Protection Clause when they rest on a rational basis and are not arbitrary. Unreasonable classifications made by laws regarding the licensing of professions deny equal protection.[9]

A law which prohibits the licensing of aliens in a profession,[10] or which requires citizenship within a specified period of time for continued licensure,[11] violates the Equal Protection Clause unless there is a compelling state interest for such prohibition or requirement.

Footnotes

1 U.S.—Locke v. Shore, 634 F.3d 1185 (11th Cir. 2011).
Md.—Attorney General of Maryland v. Waldron, 289 Md. 683, 426 A.2d 929, 17 A.L.R.4th 794 (1981).
Mass.—Roche v. Director of Div. of Marine Fisheries, 76 Mass. App. Ct. 733, 926 N.E.2d 559 (2010).
N.H.—Richardson v. Brunelle, 119 N.H. 104, 398 A.2d 838 (1979).
Rational relationship test
Cal.—Sulla v. Board of Registered Nursing, 205 Cal. App. 4th 1195, 140 Cal. Rptr. 3d 514 (1st Dist. 2012).
Pa.—Rabino v. Com., State Registration Bd. for Professional Engineers, 69 Pa. Commw. 191, 450 A.2d 773 (1982).
S.C.—City of Beaufort v. Holcombe, 369 S.C. 643, 632 S.E.2d 894 (Ct. App. 2006).
Only single profession affected
N.J.—Matter of Polk, 90 N.J. 550, 449 A.2d 7 (1982).

2 **Time as staff accountant**
N.H.—Appeal of Etlinger, 122 N.H. 639, 448 A.2d 392 (1982).

3 Pa.—Rabino v. Com., State Registration Bd. for Professional Engineers, 69 Pa. Commw. 191, 450 A.2d 773 (1982).

4 U.S.—Heaney v. Allen, 425 F.2d 869 (2d Cir. 1970).
Ky.—Kentucky Ass'n of Chiropractors, Inc. v. Jefferson County Medical Soc., 549 S.W.2d 817 (Ky. 1977).
Pa.—Com. Dept. of State v. Schatzberg, 29 Pa. Commw. 426, 371 A.2d 544 (1977).
Discipline
Ill.—Vuagniaux v. Department of Professional Regulation, 208 Ill. 2d 173, 280 Ill. Dec. 635, 802 N.E.2d 1156 (2003).
Prohibition on practices beyond scope of profession
Ga.—Foster v. Georgia Bd. of Chiropractic Examiners, 257 Ga. 409, 359 S.E.2d 877 (1987).
Iowa—State, ex rel. Iowa Dept. of Health v. Van Wyk, 320 N.W.2d 599 (Iowa 1982).

5 U.S.—Benson v. Arizona State Bd. of Dental Examiners, 673 F.2d 272 (9th Cir. 1982).
Mo.—Parmley v. Missouri Dental Bd., 719 S.W.2d 745 (Mo. 1986).
Wyo.—Frank v. State By and Through Wyoming Bd. of Dental Examiners, 965 P.2d 674 (Wyo. 1998).
Discipline of denturist
Me.—State v. Dhuy, 2003 ME 75, 825 A.2d 336 (Me. 2003).

6 U.S.—Eatough v. Albano, 673 F.2d 671 (3d Cir. 1982).
Iowa—Miller v. Board of Medical Examiners of State of Iowa, 609 N.W.2d 478 (Iowa 2000).
Mo.—Artman v. State Bd. of Registration for Healing Arts, 918 S.W.2d 247 (Mo. 1996).
N.Y.—Ross v. Ambach, 78 A.D.2d 472, 436 N.Y.S.2d 363 (3d Dep't 1981).
Nurses
U.S.—Van Staden v. St. Martin, 664 F.3d 56 (5th Cir. 2011).
Revocation of license
U.S.—Butcher v. Maybury, 8 F.2d 155 (W.D. Wash. 1925).
Tex.—Scally v. Texas State Bd. of Medical Examiners, 351 S.W.3d 434 (Tex. App. Austin 2011), cert. denied, 133 S. Ct. 1646, 185 L. Ed. 2d 627 (2013).
Evidentiary standard at disciplinary proceeding
N.J.—Matter of Polk, 90 N.J. 550, 449 A.2d 7 (1982).
Malpractice insurance
Pa.—McCoy v. Com., Bd. of Medical Educ. and Licensure, 37 Pa. Commw. 530, 391 A.2d 723 (1978).

7 U.S.—Wall & Ochs, Inc. v. Grasso, 469 F. Supp. 1088 (D. Conn. 1979).
Conn.—State v. Van Keegan, 142 Conn. 229, 113 A.2d 141 (1955).
S.C.—Wagner v. Ezell, 249 S.C. 421, 154 S.E.2d 731 (1967).

Exemption

U.S.—Wall & Ochs, Inc. v. Hicks, 469 F. Supp. 873 (E.D. N.C. 1979).

8 U.S.—Rogers v. Friedman, 438 F. Supp. 428 (E.D. Tex. 1977), judgment aff'd in part, rev'd in part on other grounds, 440 U.S. 1, 99 S. Ct. 887, 59 L. Ed. 2d 100 (1979).

Ark.—Dellinger v. Arkansas State Bd. of Optometry, 214 Ark. 562, 217 S.W.2d 338 (1949).

Cal.—Barkin v. Board of Optometry, 269 Cal. App. 2d 714, 75 Cal. Rptr. 337 (2d Dist. 1969).

9 Ill.—People v. Griffith, 280 Ill. 18, 117 N.E. 195 (1917).

10 U.S.—Szeto v. Louisiana State Bd. of Dentistry, 508 F. Supp. 268 (E.D. La. 1981).

Application of equal protection guaranty to citizenship requirements for:

Licenses, generally, see § 1529.

Licensing of attorneys, see § 1540.

11 U.S.—Surmeli v. State of N.Y., 412 F. Supp. 394 (S.D. N.Y. 1976), aff'd, 556 F.2d 560 (2d Cir. 1976).

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16C C.J.S. Constitutional Law § 1540

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

K. Taxation; Licenses, and License Taxes

2. Licenses and License or Occupational Taxes

c. Particular Occupations, Trades, Businesses, or Professions

(2) Professions

§ 1540. Practice of law

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3684

A state may require reasonable standards for a license to practice law as long as they do not contravene the Equal Protection Clause.

While entry into law practice is not a fundamental right,[1] it is nevertheless a right for all who are educationally and morally qualified for the profession,[2] or at least a privilege or franchise[3] as opposed to a matter of a grace,[4] and a state accordingly cannot exclude a person from licensure to practice law in a manner or for reasons that contravene the Equal Protection Clause.[5] The State can, however, require high standards of qualification, such as good moral character or proficiency in its law, for admission to its bar, as long as any qualification has a rational connection with an applicant's fitness or capacity to practice law.[6]

Because entry into law practice is not a fundamental right, admission requirements only have to satisfy the rational relationship test.[7] Accordingly, laws which prescribe reasonable prerequisites, resting on a rational basis, for admission to practice law,[8]

such as requiring graduation from an accredited law school,[9] or passing an examination,[10] even though exceptions are made for graduates of the state university,[11] or for attorneys who have practiced out of state,[12] do not deny equal protection. Moreover, a bar applicant, who fails the examination, is not denied equal protection when the bar board denies the applicant access to the multistate examination and answers as the board has a rational basis for not making the examination public.[13] Where, however, state bar examiners act arbitrarily and capriciously in their admittance practices, they violate the Equal Protection Clause.[14]

When a state adopts new standards for admission to its bar, it is not obliged by the Equal Protection Clause to make the new laws retroactive so as to encompass situations which have existed prior to the time the legislation becomes effective.[15] Reasonable classifications made by laws regulating the practice of law once admitted,[16] such as those made in the imposition of registration fees or license taxes,[17] or in regulating discipline or disbarment of attorneys,[18] do not deny equal protection.

Residency or citizenship requirements.

Requirements that applicants for admission to a state bar be residents of that state on the date of application for admission,[19] or for six months prior to the date of admission,[20] or in the case of out-of-state attorneys seeking admission without examination under a reciprocal agreement with a sister state, a requirement that an applicant become a permanent resident of the state,[21] or reside in the state for six months prior to making an application for admission,[22] or reside in the state for the period required by the sister state in which the applicant is admitted for admission of out-of-state attorneys,[23] have been held not to violate the Equal Protection Clause.

On the other hand, requirements that applicants for admission to a state bar be residents of that state for one year prior to the date of admission,[24] or for six months,[25] or for one year prior to the date of examination,[26] have been held to deny equal protection.

Rules which require an applicant for admission to a state bar to allege an intent to practice full time in the state,[27] or an intent to reside in the state,[28] do not deny equal protection.

Aliens.

A classification made by a rule prescribing qualifications for admission to practice law based on alienage is suspect and must satisfy the strict scrutiny test;[29] and where there is not a compelling state interest justifying such discrimination, a rule restricting admission to the bar to citizens of the United States violates the Equal Protection Clause.[30]

Footnotes

1 U.S.—National Ass'n for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037 (9th Cir. 2014), petition for certiorari filed, 83 U.S.L.W. 3764 (U.S. Mar. 19, 2015).
Iowa—Matter of Peterson, 439 N.W.2d 165 (Iowa 1989).
Okla.—Ross v. Peters, 1993 OK 8, 846 P.2d 1107 (Okla. 1993).

2 Minn.—In re Haukebo, 352 N.W.2d 752 (Minn. 1984).

3 Iowa—Matter of Peterson, 439 N.W.2d 165 (Iowa 1989).

4 Iowa—Matter of Peterson, 439 N.W.2d 165 (Iowa 1989).

5 U.S.—Schware v. Board of Bar Exam. of State of N.M., 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796, 64 A.L.R.2d 288 (1957); Bolls v. Virginia Bd. of Bar Examiners, 811 F. Supp. 2d 1260 (E.D. Va. 2011), aff'd, 464 Fed. Appx. 131 (4th Cir. 2012).
Iowa—Matter of Peterson, 439 N.W.2d 165 (Iowa 1989).
Utah—In re Arnovick, 2002 UT 71, 52 P.3d 1246 (Utah 2002).

6 U.S.—Schware v. Board of Bar Exam. of State of N.M., 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796, 64 A.L.R.2d 288 (1957).
Ga.—Pace v. Smith, 248 Ga. 728, 286 S.E.2d 18 (1982).

7 U.S.—Lombardi v. Tauro, 470 F.2d 798 (1st Cir. 1972); National Ass'n for the Advancement of Multijurisdiction Practice v. Berch, 773 F.3d 1037 (9th Cir. 2014), petition for certiorari filed, 83 U.S.L.W. 3764 (U.S. Mar. 19, 2015).
Cal.—Bib'le v. Committee of Bar Examiners, 26 Cal. 3d 548, 162 Cal. Rptr. 426, 606 P.2d 733 (1980).

8 U.S.—Wilson v. Wilson, 416 F. Supp. 984 (D. Or. 1976), judgment aff'd, 430 U.S. 925, 97 S. Ct. 1540, 51 L. Ed. 2d 768 (1977).
La.—Ex parte Minor, 280 So. 2d 217 (La. 1973).

Practice before United States district court

U.S.—Matter of Roberts, 682 F.2d 105, 34 Fed. R. Serv. 2d 576 (3d Cir. 1982).

9 U.S.—Donnelly v. Boston College, 558 F.2d 634 (1st Cir. 1977).
Cal.—Bib'le v. Committee of Bar Examiners, 26 Cal. 3d 548, 162 Cal. Rptr. 426, 606 P.2d 733 (1980).
Mass.—Matter of Corliss, 424 Mass. 1005, 675 N.E.2d 398 (1997).
For a general discussion of the educational requirements for admission to the practice of law, see C.J.S., Attorney and Client § 18.

10 U.S.—Younger v. Colorado State Bd. of Law Examiners, 625 F.2d 372 (10th Cir. 1980).
D.C.—Harper v. District of Columbia Committee on Admissions, 375 A.2d 25 (D.C. 1977).
Ga.—Pace v. Smith, 248 Ga. 728, 286 S.E.2d 18 (1982).

11 U.S.—Shenfield v. Prather, 387 F. Supp. 676 (N.D. Miss. 1974); Huffman v. Montana Supreme Court, 372 F. Supp. 1175 (D. Mont. 1974), judgment aff'd, 419 U.S. 955, 95 S. Ct. 216, 42 L. Ed. 2d 172 (1974).

12 Mont.—Goetz v. Harrison, 154 Mont. 274, 462 P.2d 891 (1969).
N.M.—Lucius v. State Bd. of Bar Examiners, 1972-NMSC-082, 84 N.M. 382, 503 P.2d 1160 (1972).

Reciprocity

U.S.—Hawkins v. Moss, 503 F.2d 1171 (4th Cir. 1974).

13 U.S.—Fields v. Kelly, 986 F.2d 225 (8th Cir. 1993).

14 **Grading**

U.S.—Richardson v. McFadden, 540 F.2d 744 (4th Cir. 1976), on reh'g, 563 F.2d 1130 (4th Cir. 1977).

15 Alaska—Application of Stephenson, 511 P.2d 136 (Alaska 1973), opinion supplemented on other grounds, 516 P.2d 1387 (Alaska 1973) (holding modified on other grounds by, Avery v. Board of Governors of Alaska Bar Ass'n, 576 P.2d 488 (Alaska 1978)) and (holding modified by, Avery v. Board of Governors of Alaska Bar Ass'n, 576 P.2d 488 (Alaska 1978)).

16 Iowa—Committee on Professional Ethics and Conduct of Iowa State Bar Ass'n v. Durham, 279 N.W.2d 280 (Iowa 1979).
Pa.—Appeal of Hanson, 330 Pa. 390, 198 A. 113 (1938).

Continuing legal education

U.S.—Verner v. State of Colo., 533 F. Supp. 1109 (D. Colo. 1982), judgment aff'd, 716 F.2d 1352 (10th Cir. 1983).
Cal.—Warden v. State Bar, 21 Cal. 4th 628, 88 Cal. Rptr. 2d 283, 982 P.2d 154 (1999).

17 U.S.—Ables v. Fones, 587 F.2d 850 (6th Cir. 1978); May v. Supreme Court of State of Colo., 508 F.2d 136 (10th Cir. 1974).
Conn.—Lublin v. Brown, 168 Conn. 212, 362 A.2d 769 (1975).

A.L.R. Library

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 A.L.R.4th 467.

18 Cal.—In re Demergian, 48 Cal. 3d 284, 256 Cal. Rptr. 392, 768 P.2d 1069 (1989).
Fla.—DeBock v. State, 512 So. 2d 164 (Fla. 1987).
Tex.—Sanchez v. Board of Disciplinary Appeals, 877 S.W.2d 751 (Tex. 1994).
Va.—Gunter v. Virginia State Bar ex rel. Seventh Dist. Committee, 241 Va. 186, 399 S.E.2d 820 (1991).

Law firm name

N.J.—On Petition for Review of Opinion 475 of Advisory Committee on Professional Ethics, 89 N.J. 74, 444 A.2d 1092, 33 A.L.R.4th 381 (1982).

19 U.S.—Lipman v. Van Zant, 329 F. Supp. 391 (N.D. Miss. 1971).

20 U.S.—Suffling v. Bondurant, 339 F. Supp. 257 (D.N.M. 1972), judgment aff'd, 409 U.S. 1020, 93 S. Ct. 460, 34 L. Ed. 2d 312 (1972).

21 U.S.—Brown v. Supreme Court of Virginia, 359 F. Supp. 549 (E.D. Va. 1973), judgment aff'd, 414 U.S. 1034, 94 S. Ct. 533, 38 L. Ed. 2d 327 (1973) and judgment aff'd, 414 U.S. 1034, 94 S. Ct. 534, 38 L. Ed. 2d 327 (1973).

Va.—Application of Titus, 213 Va. 289, 191 S.E.2d 798 (1972).

22 U.S.—Shenfield v. Prather, 387 F. Supp. 676 (N.D. Miss. 1974).

23 Tenn.—Knowlton v. Board of Law Examiners of Tennessee, 513 S.W.2d 788 (Tenn. 1974).

24 U.S.—Webster v. Wofford, 321 F. Supp. 1259 (N.D. Ga. 1970); Smith v. Davis, 350 F. Supp. 1225 (S.D. W. Va. 1972).

25 U.S.—Potts v. Honorable Justices of Supreme Court of Hawaii, 332 F. Supp. 1392 (D. Haw. 1971).

26 U.S.—Lipman v. Van Zant, 329 F. Supp. 391 (N.D. Miss. 1971); Keenan v. Board of Law Examiners of State of N. C., 317 F. Supp. 1350 (E.D. N.C. 1970).

27 U.S.—Aronson v. Ambrose, 10 V.I. 613, 479 F.2d 75 (3d Cir. 1973); Brown v. Supreme Court of Virginia, 359 F. Supp. 549 (E.D. Va. 1973), judgment aff'd, 414 U.S. 1034, 94 S. Ct. 533, 38 L. Ed. 2d 327 (1973) and judgment aff'd, 414 U.S. 1034, 94 S. Ct. 534, 38 L. Ed. 2d 327 (1973).

28 U.S.—Aronson v. Ambrose, 414 U.S. 854, 94 S. Ct. 153, 38 L. Ed. 2d 103 (1973); Wilson v. Wilson, 416 F. Supp. 984 (D. Or. 1976), judgment aff'd, 430 U.S. 925, 97 S. Ct. 1540, 51 L. Ed. 2d 768 (1977).

29 Wash.—Nielsen v. Washington State Bar Ass'n, 90 Wash. 2d 818, 585 P.2d 1191 (1978).

30 U.S.—Application of Griffiths, 413 U.S. 717, 93 S. Ct. 2851, 37 L. Ed. 2d 910 (1973).

Wash.—Nielsen v. Washington State Bar Ass'n, 90 Wash. 2d 818, 585 P.2d 1191 (1978).

Wyo.—State ex rel. Mansfield v. State Bd. of Law Examiners, 601 P.2d 174 (Wyo. 1979).

As to requirement of citizenship for admission to bar, generally, see C.J.S., Attorney and Client § 17.

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16C C.J.S. Constitutional Law VI XVII L Refs.

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

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Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
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16C C.J.S. Constitutional Law § 1541

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

1. Local Improvements and Improvement Districts

§ 1541. Validity under equal protection laws of statutes pertaining to public improvements and services, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3485, 3532

Legislation creating improvement districts may be sustained under the rational basis test.

The rational basis test is used to determine whether a law establishing a local improvement district or granting a locality the authority to proceed with certain public improvements is consistent with equal protection,[1] and a legislative classification in such a statute will not be set aside on equal protection grounds if any set of facts, rationally justifying the classification, is demonstrated.[2] Thus, a legislature may establish that municipalities over a specified population may participate in certain improvement programs,[3] the procedure for creating or vetoing the creation of a special district,[4] or that landowners resident within the district have greater rights than those residing outside it.[5] Equal protection rights are not violated if there is evidence that the property within a special district would be disproportionately benefited by the proposed improvement, and it does not appear that property that would not benefit was included solely for the purpose of increasing tax revenues.[6] The exclusion of property from a special district does not violate equal protection, where it appears that the district was created only to benefit an industrial area, even though it was contended that the property of an objecting owner was excluded.[7] Moreover, the fact that,

because of the stages of completion of an improvement project, certain property owners may not have received as much benefit from the project, at a particular time, than other property owners does not constitute a denial of equal protection.[8]

Footnotes

1 Ariz.—Gillard v. Estrella Dells I Imp. Dist., 25 Ariz. App. 141, 541 P.2d 932 (Div. 1 1975).
Pa.—Wings Field Preservation Associates, L.P. v. Com., Dept. of Transp., 776 A.2d 311 (Pa. Commw. Ct. 2001).
Urban redevelopment
Kan.—State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kan., 265 Kan. 779, 962 P.2d 543 (1998).

2 Ariz.—Gillard v. Estrella Dells I Imp. Dist., 25 Ariz. App. 141, 541 P.2d 932 (Div. 1 1975).

3 Ill.—People ex rel. Stamos v. Public Bldg. Commission of Chicago, 40 Ill. 2d 164, 238 N.E.2d 390 (1968).

4 Ill.—Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).
Petition for district
The exclusion of a church, as a tax-exempt entity, from petitioning for the creation of an improvement district did not violate its equal protection rights, even though its property was subject to an assessment, since it was not similarly situated to nonexempt property owners who bore a greater financial burden with respect to the taxes, and it was logical that nonexempt property owners should be the ones to petition for creation of an improvement district.
S.C.—German Evangelical Lutheran Church of Charleston v. City of Charleston, 352 S.C. 600, 576 S.E.2d 150 (2003).
Airport
There was no rational basis, for equal protection purposes, for a provision prohibiting the expenditure of federal or state money for airport operations or development in any county of a certain class and population without the approval of the municipalities in which the airport is situated where there was no legitimate state interest in giving any municipality total control over airport funding decisions, this power appeared to violate federal requirements, and local concerns were already addressed by existing ordinances and procedures.
Pa.—Wings Field Preservation Associates, L.P. v. Com., Dept. of Transp., 776 A.2d 311 (Pa. Commw. Ct. 2001).

5 Miss.—Union Savings Bank & Trust Co. v. City of Jackson, 122 Miss. 557, 84 So. 388 (1920).

6 Ill.—Grais v. City of Chicago, 151 Ill. 2d 197, 176 Ill. Dec. 47, 601 N.E.2d 745 (1992).

7 Ill.—Village of Lake Barrington v. Hogan, 272 Ill. App. 3d 225, 208 Ill. Dec. 705, 649 N.E.2d 1366 (2d Dist. 1995).

8 Cal.—Shaeffer v. State of California, 22 Cal. App. 3d 1017, 99 Cal. Rptr. 861 (3d Dist. 1972) (disapproved of on other grounds by, County of San Diego v. Miller, 13 Cal. 3d 684, 119 Cal. Rptr. 491, 532 P.2d 139 (1975)).

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16C C.J.S. Constitutional Law § 1542

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

1. Local Improvements and Improvement Districts

§ 1542. Elections

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3486

Equal protection does not require that questions concerning local improvement districts be submitted to popular vote, and the "one person, one vote" rule does not apply if the district does not exercise general governmental powers.

Statutes dealing with local improvement districts do not violate equal protection because they do not require that questions concerning the creation, governance, or operation of the district be submitted to a popular vote.[1] Conversely, constitutional provisions and statutes requiring that local improvement projects be approved by a mandatory referendum before they may be implemented may also be consistent with equal protection.[2]

If the principal purpose of a special district is to govern, and its functions are primarily governmental in nature, or if not governmental in nature are accomplished by the exercise of general powers of government, the "one person, one vote" doctrine[3] applies.[4] However, a district is not subject to the doctrine if its principal purpose is to provide a service that can be provided by a private or quasi-public corporation and if it does not exercise general government powers.[5] Thus, statutes that limit the right to vote in local district elections to landowners in a water district do not violate equal protection where the district provides no

other general public service, and assessments are made against the land in proportion to the benefits received.[6] The "one person, one vote" principle similarly does not apply to a benefit assessment district, where votes are allotted on the basis of the assessed value of real property, on the theory that the value of the commercial property located in the district would benefit from a transit improvement.[7] County residents who are not residents of a public transportation benefit area have no constitutional right to vote on a sales tax to be levied solely within the benefit area and thus are not denied equal protection by being excluded.[8]

Petition rather than election.

Statutes dealing with the creation, organization, and maintenance of local improvement districts by petition rather than election do not deny equal protection.[9] Thus, a petitioning process that provides for the creation of an improvement district by the petition of a certain percentage of the landowners[10] or of the owners of a certain percentage of the land[11] does not deny equal protection.

Footnotes

1 U.S.—Clem v. Cooper Communities, Inc., 344 F. Supp. 579 (E.D. Ark. 1972).
Minn.—Morton v. Board of Com'rs of Ramsey County, 301 Minn. 415, 223 N.W.2d 764 (1974).

2 U.S.—James v. Valtierra, 402 U.S. 137, 91 S. Ct. 1331, 28 L. Ed. 2d 678 (1971).
As to elections authorizing the issuance of bonds, see § 1544.

3 §§ 1428 to 1443.

4 Cal.—Burrey v. Embarcadero Mun. Improvement Dist., 5 Cal. 3d 671, 97 Cal. Rptr. 203, 488 P.2d 395 (1971).

5 Cal.—Thompson v. Board of Directors of Turlock Irr. Dist., 247 Cal. App. 2d 587, 55 Cal. Rptr. 689 (5th Dist. 1967).
Fla.—Lake Howell Water and Reclamation Dist. v. State, 268 So. 2d 897 (Fla. 1972).
Wyo.—Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist., 490 P.2d 1069 (Wyo. 1971), judgment aff'd, 410 U.S. 743, 93 S. Ct. 1237, 35 L. Ed. 2d 675 (1973).

6 U.S.—Ball v. James, 451 U.S. 355, 101 S. Ct. 1811, 68 L. Ed. 2d 150 (1981).
N.Y.—Esler v. Walters, 56 N.Y.2d 306, 452 N.Y.S.2d 333, 437 N.E.2d 1090 (1982).

7 Cal.—Southern Cal. Rapid Transit Dist. v. Bolen, 1 Cal. 4th 654, 3 Cal. Rptr. 2d 843, 822 P.2d 875 (1992).

8 Wash.—Fakkema v. Island County Public Transp. Benefit Area, 106 Wash. 2d 347, 722 P.2d 90 (1986).

9 N.M.—Petition of Lower Valley Water and Sanitation Dist., 1981-NMSC-088, 96 N.M. 532, 632 P.2d 1170 (1981).

10 Ariz.—Gillard v. Estrella Dells I Imp. Dist., 25 Ariz. App. 141, 541 P.2d 932 (Div. 1 1975).

11 Ariz.—Gillard v. Estrella Dells I Imp. Dist., 25 Ariz. App. 141, 541 P.2d 932 (Div. 1 1975).
Wash.—Cunningham v. King County Boundary Review Bd., 6 Wash. App. 385, 493 P.2d 811 (Div. 1 1972).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

1. Local Improvements and Improvement Districts

§ 1543. Assessments, special taxes, or fees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3487

The cost of public improvements may be assessed against the property benefited without violating equal protection, in the absence of manifest and unreasonable discrimination.

Although the power to impose assessments for public improvements on property specially benefited must be exercised consistently with equal protection,[1] it is generally recognized that nothing in the Equal Protection Clause prohibits those assessments.[2] Government officials have a large measure of discretion in determining the boundaries of the district benefited by the improvement and on which the assessment is levied[3] and also in determining the method of apportioning the cost among those benefited.[4] Equal protection does not prohibit exempting certain properties[5] or confining the right to protest to owners of property subject to a special assessment.[6] Courts have upheld, in the face of equal protection challenges, distinctions between commercial and residential property,[7] a park fee imposed when an apartment building is converted into condominiums,[8] a statute providing for the sale of lands forfeited for tax delinquency free of liens for special assessments,[9] and a statute giving municipal authorities the discretionary power to determine whether to grant refunds of special assessments.[10]

An apportionment of the cost of an improvement on the several properties within the district in accordance with the benefits accruing to each is not only valid[11] but is also the most equitable method of apportionment.[12] While it has been held that statutes that provide for the taxation of both real and personal property located within the specified area do not deny equal protection,[13] ordinarily, the levy may be on lands specially benefited according to value,[14] position,[15] area,[16] or front footage[17] so long as all property is treated in the same manner.[18] All that is required by the constitutional requirement of equal protection is that the burden of the assessments be apportioned with approximate equality, on a reasonable basis of classification, and with due regard to the benefits to individual property owners[19] although the assessment need not directly correspond to the monetary value of the benefits received so long as there is a rational basis for the taxation within the special area.[20] The fact that the economic impact of a special assessment is greater on some property owners does not mean they are denied equal protection where the statutes involved apply equally to all persons who own property.[21] Equal protection is violated only where there is manifest and unreasonable discrimination in fixing the benefits that the several parcels will receive.[22] However, the boundaries of a municipal taxing district may be so located as to constitute a denial of equal protection,[23] and an assessment will be held invalid if it is plainly arbitrary or unreasonably discriminatory.[24]

The fact that an improvement district allows a levy of taxes by appointed rather than elected officials does not violate equal protection[25] nor does a requirement of a two-thirds vote to approve special local taxes.[26]

Sewer districts.

The preceding principles have been applied for the purpose of sustaining the validity of legislation creating sewer districts, prescribing their boundaries, and assessing the costs of improvements on the lands of the particular district.[27] It is not a denial of equal protection to create a sewer subdistrict and to impose a district-wide ad valorem tax to finance construction in heavily populated areas of the subdistrict.[28] Given the complexities and higher costs of construction in a particular area, a political subdivision may levy a special assessment to offset the cost of the installation of sewer lines within a residential subdivision even though it had paid for sewers with general funds in the past.[29]

Footnotes

1 U.S.—Creason v. City of Washington, 435 F.3d 820 (8th Cir. 2006).
Fla.—Martin v. Dade Muck Land Co., 95 Fla. 530, 116 So. 449 (1928).
Ga.—Greene County Bd. of Com'rs v. Higdon, 277 Ga. App. 350, 626 S.E.2d 541 (2006).
W. Va.—Davisson v. City of Bridgeport, 2014 WL 184436 (W. Va. 2014).

2 Colo.—People ex rel. Setters v. Lee, 72 Colo. 598, 213 P. 583 (1923).
Fla.—Dover Drainage Dist. v. Pancoast, 102 Fla. 267, 135 So. 518 (1931).
Ga.—Baugh v. City of La Grange, 161 Ga. 80, 130 S.E. 69 (1925).
Ky.—Miller v. City of Ashland, 310 Ky. 680, 221 S.W.2d 620 (1949).
Mo.—In re Main Street, 198 S.W. 821 (Mo. 1917).
N.M.—In re Proposed Middle Rio Grande Conservancy Dist., 1925-NMSC-058, 31 N.M. 188, 242 P. 683 (1925).
N.D.—Northern Pac. Ry. Co. v. Sargent County, 43 N.D. 156, 174 N.W. 811 (1919).
Pa.—City of Philadelphia, to Use of McHugh v. Crew-Levick Co., 278 Pa. 218, 122 A. 300 (1923).
R.I.—In re Opinion of the Justices, 34 R.I. 191, 83 A. 3 (1912).
Tex.—Cain v. City of Tyler, 261 S.W. 1018 (Tex. Comm'n App. 1924).
Wis.—Chicago & N.W. Ry. Co. v. Railroad Commission of Wisconsin, 178 Wis. 485, 188 N.W. 86 (1922).

3 U.S.—Milheim v. Moffat Tunnel Improvement Dist., 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).

4 U.S.—Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 6 of Little River County, Ark., 256 U.S. 658, 41 S. Ct. 604, 65 L. Ed. 1151 (1921).

5 Conn.—State v. Sixth Taxing Dist., 104 Conn. 192, 132 A. 561 (1926).
Or.—Wing v. City of Eugene, 249 Or. 367, 437 P.2d 836 (1968).

6 Utah—Dawson v. Swapp, 26 Utah 2d 250, 487 P.2d 1288 (1971).

7 Or.—Clinkscales v. City of Lake Oswego, 30 Or. App. 851, 568 P.2d 696 (1977).

8 Cal.—Norsco Enterprises v. City of Fremont, 54 Cal. App. 3d 488, 126 Cal. Rptr. 659 (1st Dist. 1976).

9 Ohio—State ex rel. City of South Euclid v. Zangerle, 145 Ohio St. 433, 31 Ohio Op. 57, 62 N.E.2d 160 (1945).

10 Mich.—Devormer v. City Commission of Grand Rapids, 293 Mich. 592, 292 N.W. 677 (1940).

11 U.S.—Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 3 of Sevier County, Ark., 266 U.S. 379, 45 S. Ct. 136, 69 L. Ed. 335 (1924).
Ohio—Muskingum Watershed Conservancy Dist. v. Ohio Power Co., 58 Ohio App. 315, 9 Ohio Op. 394, 16 N.E.2d 553 (5th Dist. Tuscarawas County 1937).

12 U.S.—Village of Norwood v. Baker, 172 U.S. 269, 19 S. Ct. 187, 43 L. Ed. 443 (1898).

13 Ill.—Ciacco v. City of Elgin, 85 Ill. App. 3d 507, 40 Ill. Dec. 877, 407 N.E.2d 108 (2d Dist. 1980).

14 U.S.—Memphis & C. Ry. Co. v. Pace, 282 U.S. 241, 51 S. Ct. 108, 75 L. Ed. 315, 72 A.L.R. 1096 (1931).

15 U.S.—Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 6 of Little River County, Ark., 256 U.S. 658, 41 S. Ct. 604, 65 L. Ed. 1151 (1921).
Kan.—Silks v. Lateral Sewer Dist. No. T-39, 202 Kan. 489, 450 P.2d 25 (1969).

16 U.S.—Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 6 of Little River County, Ark., 256 U.S. 658, 41 S. Ct. 604, 65 L. Ed. 1151 (1921); McGowan v. Capital Center, Inc., 19 F. Supp. 2d 642 (S.D. Miss. 1998).
Kan.—Silks v. Lateral Sewer Dist. No. T-39, 202 Kan. 489, 450 P.2d 25 (1969).
La.—Hagmann v. City of New Orleans, 190 La. 796, 182 So. 753 (1938).

Different determinations of square footage

A special assessment that discriminated between large department stores and smaller retailers, by assessing smaller retailers based on the total square footage of their stores, while assessing department stores based on the square footage of only a portion of their floors, did not violate the equal protection rights of retailers, given evidence that large department stores benefited less from advertising and promotional services provided for the businesses within the special assessment district.

Wash.—City of Seattle v. Rogers Clothing for Men, Inc., 114 Wash. 2d 213, 787 P.2d 39 (1990).

17 U.S.—Kansas City Southern Ry. Co. v. Road Imp. Dist. No. 6 of Little River County, Ark., 256 U.S. 658, 41 S. Ct. 604, 65 L. Ed. 1151 (1921).
Colo.—Orchard Court Development Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).
S.C.—Hagley Homeowners Ass'n, Inc. v. Hagley Water, Sewer, and Fire Authority, 326 S.C. 67, 485 S.E.2d 92 (1997).

18 Miss.—Stingily v. City of Jackson, 140 Miss. 19, 104 So. 465 (1925).
Or.—Western Amusement Co., Inc. v. City of Springfield, 21 Or. App. 7, 533 P.2d 825 (1975), decision aff'd, 274 Or. 37, 545 P.2d 592 (1976).

19 Ariz.—Weitz v. Davis, 102 Ariz. 40, 424 P.2d 168 (1967).

20 Ill.—Coryn v. City of Moline, 71 Ill. 2d 194, 15 Ill. Dec. 776, 374 N.E.2d 211 (1978).

21 Ariz.—Hinz v. City of Phoenix, 118 Ariz. 161, 575 P.2d 360 (Ct. App. Div. 1 1978).

22 U.S.—Milheim v. Moffat Tunnel Improvement Dist., 262 U.S. 710, 43 S. Ct. 694, 67 L. Ed. 1194 (1923).
Or.—Wing v. City of Eugene, 249 Or. 367, 437 P.2d 836 (1968).

23 U.S.—Gast Realty & Investment Co. v. Schneider Granite Co., 240 U.S. 55, 36 S. Ct. 254, 60 L. Ed. 523 (1916).

24 U.S.—Memphis & C. Ry. Co. v. Pace, 282 U.S. 241, 51 S. Ct. 108, 75 L. Ed. 315, 72 A.L.R. 1096 (1931).
Ariz.—Home Builders Ass'n of Central Arizona, Inc. v. City of Scottsdale, 116 Ariz. 340, 569 P.2d 282 (Ct. App. Div. 1 1977).
Mich.—Andrews v. Jackson County, 43 Mich. App. 160, 203 N.W.2d 925 (1972).
S.C.—Newton v. Hanlon, 248 S.C. 251, 149 S.E.2d 606 (1966).

Only upon showing that omission was arbitrary or fraudulent

Ohio—Schiff v. City of Columbus, 9 Ohio St. 2d 31, 38 Ohio Op. 2d 94, 223 N.E.2d 54 (1967).

25 Ill.—People ex rel. Hanrahan v. Caliendo, 50 Ill. 2d 72, 277 N.E.2d 319 (1971).

26 Cal.—Santa Clara County Local Transportation Authority v. Guardino, 11 Cal. 4th 220, 12 Cal. 4th 344e, 45 Cal. Rptr. 2d 207, 902 P.2d 225 (1995), as modified on denial of reh'g, (Dec. 14, 1995).

27 Ill.—Marriott v. Springfield Sanitary Dist., 43 Ill. App. 3d 869, 2 Ill. Dec. 499, 357 N.E.2d 666 (4th Dist. 1976).

Kan.—McCoy v. City of Florence, 409 S.W.2d 511 (Ky. 1966).

Mich.—Mobile Home Parks, Inc. v. Paris Tp., 9 Mich. App. 8, 155 N.W.2d 694 (1967).

S.C.—Wright v. Proffitt, 261 S.C. 68, 198 S.E.2d 275 (1973).

As to connection and user fees, see § 1552.

Assessment based on valuation rather than use

Conn.—Tower Business Park Associates No. One Ltd. Partnership v. Water Pollution Control Authority of Town of Simsbury, 213 Conn. 112, 566 A.2d 696 (1989).

Discharge of all outstanding assessments

A city's discharge of all outstanding assessments for sewer replacement, but failure to issue refunds for those assessments already paid, when implementing a new method of financing sewer improvements was not applied in a discriminatory manner against an individual or a small group of individuals whose only common characteristic was that they had been singled out for different treatment, and therefore, the action did not violate equal protection as applied, where the city made a broad classification on the basis of a common characteristic, outstanding assessment balances, and there was no evidence that the city's action was motivated by animus or ill-will toward property owners who did not have outstanding balances.

Ind.—City of Indianapolis v. Armour, 946 N.E.2d 553 (Ind. 2011), aff'd, 132 S. Ct. 2073, 182 L. Ed. 2d 998 (2012).

28 S.C.—Wright v. Proffitt, 261 S.C. 68, 198 S.E.2d 275 (1973).

29 N.J.—Strauss v. Township of Holmdel, 312 N.J. Super. 610, 711 A.2d 1385 (Law Div. 1997).

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16C C.J.S. Constitutional Law § 1544

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

1. Local Improvements and Improvement Districts

§ 1544. Authorization and issuance of bonds

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3486

Rational distinctions may be made with regard to who benefits from improvements financed by bonds, and while equal protection does not require that an election be held to authorize the issuance of bonds, persons may be disqualified from voting on the proposition only in accordance with a compelling state interest.

Provided that it bears a rational relationship to a legitimate legislative purpose, a statute that authorizes the issuance of bonds to raise revenue to finance particular local improvements does not deny equal protection[1] even though it is alleged that the construction of a project to the financed by the bonds may stop before the taxpayer's property is benefited[2] or because the money raised is only to be applied to provide low interest mortgages to first-time home and condominium buyers.[3] It is not a denial of equal protection for a local authority to issue bonds to finance local improvements that only benefit industrial and commercial projects.[4] Bonds for certain types of economic development projects may have longer maturities than others, if the particular type of project provides unique economic benefits to the State, and the extension of time for repayment of the bonds for those facilities would encourage their location in the state, by making them more economically feasible.[5]

The doctrine of equal protection does not require an election on the issuance of special improvement bonds,[6] and therefore, only a reasonable basis for a statute that authorizes certain counties to issue bonds without voter approval need exist.[7]

Where a state statute grants the right to vote in a limited purpose election, such as one called to approve the issuance of bonds, to some otherwise qualified voters and denies it to others, it must be determined whether the exclusions are necessary to promote a compelling state interest and whether those excluded are in fact substantially less interested or affected than those included.[8] Accordingly, some statutory provisions that give only property owners the right to vote in elections called to approve the issuance of general obligation or utility revenue bonds have been held to deny equal protection,[9] on the basis that the differences between the interests of the two groups of residents are not sufficiently substantial to justify excluding nonowners from the franchise, because all residents have a substantial interest in the public facilities, and revenues other than property taxes may be applied to retire the bonds.[10] Moreover, a statute that weighs each elector's vote in bond elections in proportion to the property subject to assessment violates the Equal Protection Clause.[11]

Where an election to authorize the issuance of municipal improvement bonds is held while an annexation contest was pending, a refusal to allow the residents of the area that is being annexed to vote in bond election is not violative of equal protection since the right to vote may be limited to voters who are residents of the city at the time of the election.[12]

Supermajority provisions for the approval of bonds have been upheld as not violating equal protection.[13] A requirement that a bond issue must be approved by a majority of the votes cast for members of the legislature at the same election has also been upheld.[14] A referendum statute, which requires that a petition regarding a bond issue be supported by at least 10% of votes cast in the county for President or Governor at the preceding general election, does not violate equal protection, since it applies to all counties, and even though it was claimed that it was more difficult to obtain the required number of signatures in a larger county in the time allowed, there are also certain advantages to being in a larger county with regard to the ability to publicize the petition drive.[15]

Footnotes

1 La.—Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, 938 So. 2d 11 (La. 2006).

2 S.C.—Wright v. Proffitt, 261 S.C. 68, 198 S.E.2d 275 (1973).

3 Ill.—Illinois Housing Development Authority v. Van Meter, 82 Ill. 2d 116, 45 Ill. Dec. 18, 412 N.E.2d 151 (1980).

4 S.C.—Harper v. Schooler, 258 S.C. 486, 189 S.E.2d 284 (1972).
W. Va.—State ex rel. Ohio County Commission v. Samol, 165 W. Va. 714, 275 S.E.2d 2 (1980).
Wis.—State ex rel. Hammermill Paper Co. v. La Plante, 58 Wis. 2d 32, 205 N.W.2d 784 (1973).

5 Kan.—State ex rel. Tomasic v. Unified Government of Wyandotte County/Kansas City, Kan., 265 Kan. 779, 962 P.2d 543 (1998).

6 Ill.—People ex rel. Hanrahan v. Caliendo, 50 Ill. 2d 72, 277 N.E.2d 319 (1971).
Nev.—Damus v. Clark County, 93 Nev. 512, 569 P.2d 933 (1977).
Exemption of municipal economic development bonds from referendum
U.S.—Johnson v. City of Minneapolis, 152 F.3d 859 (8th Cir. 1998).

7 Nev.—Damus v. Clark County, 93 Nev. 512, 569 P.2d 933 (1977).

8 U.S.—City of Phoenix, Ariz. v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970).

9 U.S.—City of Phoenix, Ariz. v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970); Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969).
N.M.—Board of Ed. of Village of Cimarron v. Maloney, 1970-NMSC-146, 82 N.M. 167, 477 P.2d 605 (1970).

Okla.—City of Spencer v. Rayburn, 1971 OK 38, 483 P.2d 735 (Okla. 1971).

10 U.S.—City of Phoenix, Ariz. v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970).

11 U.S.—Stewart v. Parish School Bd. of St. Charles Parish, 310 F. Supp. 1172 (E.D. La. 1970), judgment aff'd, 400 U.S. 884, 91 S. Ct. 136, 27 L. Ed. 2d 129 (1970).

12 Ark.—Tanner v. City of Little Rock, 261 Ark. 573, 550 S.W.2d 177 (1977).

13 U.S.—Gordon v. Lance, 403 U.S. 1, 91 S. Ct. 1889, 29 L. Ed. 2d 273 (1971).

Idaho—Bogert v. Kinzer, 93 Idaho 515, 465 P.2d 639 (1970).

Requirement applies uniformly across state

N.H.—Opinion of the Justices, 145 N.H. 680, 765 A.2d 706, 150 Ed. Law Rep. 765 (2001).

14 Ill.—In re Natural Resources Development Bond Act, 47 Ill. 2d 81, 264 N.E.2d 129 (1970).

15 Iowa—Bowers v. Polk County Bd. of Supervisors, 638 N.W.2d 682 (Iowa 2002).

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16C C.J.S. Constitutional Law § 1545

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

2. Highways, Streets, and Bridges

§ 1545. Validity under equal protection laws of statutes pertaining to construction and maintenance of highways, streets, and bridges, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3526(2), 3527

The Equal Protection Clause does not invalidate regulations regarding the construction and maintenance of highways if there is no arbitrary discrimination.

Equal protection principles do not invalidate regulations with respect to the construction and maintenance of highways[1] and bridges[2] as long as no arbitrary discrimination is made. While a utility may be required to bear the expense of relocating its facilities, when necessitated by highway construction, without violating equal protection,[3] allowing reimbursement only for the relocation of lines in cities and towns, while not for lines in unincorporated portions of counties, is arbitrary and violates equal protection.[4] Requiring a railroad to pay for a street crossing, but not requiring a pipeline company to relocate its facilities at its own expense, does not deny the railroad equal protection since a railroad has public duties relating to the provision of safe crossings.[5] Statutes authorizing the sale, conveyance, or lease of certain public rights-of-way and existing highways to finance an interstate highway program,[6] the creation of turnpike corporations to operate toll roads,[7] and the expenditure of highway funds[8] have been upheld in the face of equal protection challenges as have laws defining private roads that may be maintained by

municipalities,[9] exempting a particular highway project from environmental requirements,[10] and requiring that 10% of federal transportation funds be spent on contracts with businesses owned by socially and economically disadvantaged individuals.[11]

Footnotes

1 Kan.—State v. State Highway Commission, 136 Kan. 652, 17 P.2d 839 (1933).
Ky.—Guthrie v. Curlin, 263 S.W.2d 240 (Ky. 1953).
Mich.—Wayne County v. Fuller, 250 Mich. 227, 229 N.W. 911 (1930).
Failure to maintain streets in condominium development
Mo.—Nowotny v. Ryan, 534 S.W.2d 559 (Mo. Ct. App. 1976).
Specification of crushed stone rather than gravel
Vt.—Hinesburg Sand & Gravel Co., Inc. v. State, 166 Vt. 337, 693 A.2d 1045 (1997).
Road unpaved
N.H.—Webster v. Town of Candia, 146 N.H. 430, 778 A.2d 402 (2001).
Lack of consent to loss of access suit
Wis.—Kallembach v. State, 129 Wis. 2d 402, 385 N.W.2d 215 (Ct. App. 1986).
Negligent design of highway resulting in accident
U.S.—Smith v. Bernier, 701 F. Supp. 1171 (D. Md. 1988).

2 Mo.—State ex rel. Alton R. Co. v. Public Service Com'n, 334 Mo. 985, 70 S.W.2d 52 (1934).
Free bridge replaced by nearby toll bridge
U.S.—Bartron v. Delaware River Joint Toll Bridge Commission, 120 F. Supp. 337 (D.N.J. 1954), judgment aff'd, 216 F.2d 717 (3d Cir. 1954) (disapproved of on other grounds by, Di Frischia v. New York Cent. R. Co., 279 F.2d 141, 3 Fed. R. Serv. 2d 109 (3d Cir. 1960)).
Requiring localities to maintain bridges in state park
Ill.—County of Bureau v. Thompson, 139 Ill. 2d 323, 151 Ill. Dec. 508, 564 N.E.2d 1170 (1990).

3 U.S.—Erie R. Co. v. Board of Public Utility Com'rs, 254 U.S. 394, 41 S. Ct. 169, 65 L. Ed. 322 (1921).
Ky.—Southern Bell Tel. & Tel. Co. v. Com., 266 S.W.2d 308 (Ky. 1954).

4 U.S.—Potomac Elec. Power Co. v. Fugate, 341 F. Supp. 887 (E.D. Va. 1972), judgment aff'd, 409 U.S. 943, 93 S. Ct. 290, 34 L. Ed. 2d 215 (1972).

5 Okla.—Atchison, Topeka and Santa Fe Ry. Co. v. State, 1984 OK 29, 683 P.2d 974 (Okla. 1984).

6 Wis.—State ex rel. La Follette v. Reuter, 36 Wis. 2d 96, 153 N.W.2d 49 (1967).

7 Wis.—State ex rel. Thomson v. Giessel, 265 Wis. 185, 60 N.W.2d 873 (1953).

8 Fla.—Sattler v. Askew, 295 So. 2d 289 (Fla. 1974).
Tenn.—City of Greenfield v. Butts, 582 S.W.2d 80 (Tenn. Ct. App. 1979).
Treatment of incorporated and unincorporated areas
La.—Pasqua v. St. Landry Parish Police Jury, 651 So. 2d 430 (La. Ct. App. 3d Cir. 1995).
Inadequacy of funds
The mere fact that funds distributed to a city were allegedly inadequate to accomplish the purpose of constructing and maintaining certain bridges for which the city was responsible did not mean that the city was necessarily denied equal protection.
Ohio—City of Washington Court House v. Dumford, 22 Ohio App. 2d 75, 51 Ohio Op. 2d 139, 258 N.E.2d 261 (2d Dist. Fayette County 1969).
Tax credit
An act providing for grants of state funds to counties for road construction, provided that the county gave equivalent tax credits according to specified formulas involving homesteads and tangible property, was based on a reasonable classification and did not deny equal protection.
Ga.—Brown v. Wright, 231 Ga. 686, 203 S.E.2d 487 (1974).

9 Me.—Opinion of the Justices of the Supreme Judicial Court, 560 A.2d 552 (Me. 1989).

10 U.S.—Stop H-3 Ass'n v. Dole, 870 F.2d 1419 (9th Cir. 1989).

11 U.S.—Milwaukee County Pavers Ass'n v. Fiedler, 922 F.2d 419 (7th Cir. 1991).

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16C C.J.S. Constitutional Law § 1546

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

2. Highways, Streets, and Bridges

§ 1546. Regulation of use, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3526, 3527, 3734

Reasonable classifications and distinctions in regulations concerning the use of highways do not violate the Equal Protection Clause.

A law regulating the use of streets and highways does not violate the Equal Protection Clause if any classification made by it is reasonable and has a rational basis.[1]

A statute or ordinance that regulates the use of streets by motor vehicles, classifying them according to the frequency and character of their use, and making a reasonable distinction between them and other vehicles does not deny equal protection.[2] Regulations have been held valid that regulate the speed and operation of motor vehicles,[3] or limit their size and weight,[4] although a special statute that is inconsistent with the general law allowing vehicles with a greater weight to be operated on state highways may be unconstitutional as violating equal protection.[5] The constitutionality of these regulations is not affected by the fact that they prescribe different standards for commercial vehicles[6] or for "straight trucks" and truck trailer combinations[7] or that they exempt from the regulations motor vehicles owned by a government body,[8] vehicles transporting property to and

from a common carrier's loading points,[9] passenger buses,[10] farmers transporting farm produce or supplies,[11] or implements of husbandry and highway building machinery temporarily moving on the highway.[12] Laws have also been upheld that exclude all commercial vehicles from a specified street in a city[13] and prohibit advertising vehicles except those engaged in the usual business of the owner and not mainly for advertising.[14]

The length of motor vehicles operated on highways may be regulated without violating equal protection[15] even if the regulation exempts public service corporations hauling poles, authorizes trains of vehicles under special conditions,[16] or exempts certain single-piece long loads in the interest of competitive and efficient transportation of those items.[17]

Equal protection is not denied by regulations that limit the size and weight of certain commodities or loads transported by trucks,[18] except under temporary or special permits,[19] although no such limitation is placed on passenger vehicles;[20] temporarily close a road to certain vehicles such as lumber, logging, and freight trucks;[21] or require a permit for new curb cuts for driveways.[22]

Drunk drivers.

Drunk drivers are not a suspect class for equal protection purposes.[23]

Seat belts.

A mandatory seat belt law does not deny equal protection, even though it does not include recreational vehicles, since a legislature could reasonably have found that recreational vehicles were larger and afforded more protection from injury.[24]

Financial responsibility.

Statutes requiring motorists to carry liability insurance,[25] or requiring proof of financial responsibility in certain cases,[26] do not deny equal protection although they are not applicable to the owners of other vehicles or railroads, or to nonresident owners or operators of motor vehicles,[27] or to operators of vehicles owned by the public.[28]

Footnotes

1 U.S.—Railway Exp. Agency v. People of State of N.Y., 336 U.S. 106, 69 S. Ct. 463, 93 L. Ed. 533 (1949).
Kan.—Taneyhill v. Kansas City, 133 Kan. 725, 3 P.2d 645 (1931).
N.Y.—People v. Ditniak, 28 N.Y.2d 74, 320 N.Y.S.2d 25, 268 N.E.2d 768 (1971).
N.C.—North Carolina State Highway Commission v. Mills Mfg. Co., 24 N.C. App. 478, 211 S.E.2d 460 (1975).
Okla.—Hirsh v. Oklahoma City, 94 Okla. Crim. 249, 234 P.2d 925 (1951).
Tex.—Ex parte Smith, 152 Tex. Crim. 126, 211 S.W.2d 204 (1948).
Wash.—Robertson v. Department of Public Works, 180 Wash. 133, 39 P.2d 596 (1934).
Horseback riding on park roads
Kan.—State v. Risjord, 249 Kan. 497, 819 P.2d 638 (1991).
Drive-in theater
Moving picture screens visible to motorists on a public highway are a special hazard, justifying a special ordinance.
N.C.—Variety Theatres, Inc. v. Cleveland County, 282 N.C. 272, 192 S.E.2d 290 (1972).

2 Colo.—Carl Ainsworth, Inc. v. Town of Morrison, 189 Colo. 223, 539 P.2d 1267 (1975).
Fla.—Powell v. State, 345 So. 2d 724 (Fla. 1977).
Ohio—City of Niles v. Dean, 25 Ohio St. 2d 284, 54 Ohio Op. 2d 392, 268 N.E.2d 275 (1971).
Pa.—Maurer v. Boardman, 336 Pa. 17, 7 A.2d 466 (1939), judgment aff'd, 309 U.S. 598, 60 S. Ct. 726, 84 L. Ed. 969, 135 A.L.R. 1347 (1940).
Wash.—Elkins v. Schaaf, 4 Wash. 2d 12, 102 P.2d 230 (1940).
Statutes requiring that operators of motor vehicles obtain licenses as not denying equal protection, see § 1531.

Spillage of material

A spillage of material statute that contained exemptions for farming operations, road construction equipment in construction zones, and state and municipal maintenance equipment satisfied equal protection since the legislature could reasonably have found that the exempted activities involved less danger and would bear a greater burden than traffic in general if subjected to the statute.
N.H.—State v. Hadley, 115 N.H. 541, 345 A.2d 160 (1975).

3 Ark.—Neikirk v. State, 260 Ark. 526, 542 S.W.2d 282 (1976).
Idaho—State v. Heitz, 72 Idaho 107, 238 P.2d 439 (1951).
Or.—State v. Ringle, 40 Or. App. 393, 595 P.2d 824 (1979).
Pa.—Com. Dept. of Transp. Bureau of Traffic Safety v. Vairo, 9 Pa. Commw. 454, 308 A.2d 159 (1973).

Automated traffic enforcement system

Fla.—State v. Arrington, 95 So. 3d 324 (Fla. 4th DCA 2012).

4 Ala.—Tyus v. State, 347 So. 2d 1377 (Ala. Crim. App. 1977).
Idaho—State v. Heitz, 72 Idaho 107, 238 P.2d 439 (1951).
Iowa—Des Moines Metropolitan Area Solid Waste Agency v. City of Grimes, 495 N.W.2d 746 (Iowa 1993).
Ky.—Whitney v. Fife, 270 Ky. 434, 109 S.W.2d 832 (1937).
La.—Boudreaux v. Larpenter, 110 So. 3d 159 (La. Ct. App. 1st Cir. 2012).
Ohio—Western Trucking Co. v. City of Lincoln Heights, 19 Ohio App. 2d 85, 48 Ohio Op. 2d 173, 249 N.E.2d 925 (1st Dist. Hamilton County 1969).
Wis.—State v. Seraphine, 266 Wis. 118, 62 N.W.2d 403 (1954).

5 Fla.—State ex rel. Parker v. Frick, 150 Fla. 148, 7 So. 2d 152 (1942).

6 Okla.—Hirsh v. Oklahoma City, 94 Okla. Crim. 249, 234 P.2d 925 (1951).
Wash.—Elkins v. Schaaf, 4 Wash. 2d 12, 102 P.2d 230 (1940).

Amphibious tour vehicles barred from historic district

Ga.—Old South Duck Tours v. Mayor & Aldermen of City of Savannah, 272 Ga. 869, 535 S.E.2d 751 (2000).

7 Kan.—City of Overland Park v. McLaughlin, 238 Kan. 637, 714 P.2d 939 (1986).

8 Ala.—Department of Public Safety v. Freeman Ready-Mix Co., 292 Ala. 380, 295 So. 2d 242 (1974).
Ky.—Whitney v. Fife, 270 Ky. 434, 109 S.W.2d 832 (1937).
Wis.—State v. Seraphine, 266 Wis. 118, 62 N.W.2d 403 (1954).

9 U.S.—Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932).

10 U.S.—Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932).
Ky.—Whitney v. Fife, 270 Ky. 434, 109 S.W.2d 832 (1937).
Wis.—State v. Wetzel, 208 Wis. 603, 243 N.W. 768, 86 A.L.R. 274 (1932).

11 Colo.—Public Utilities Com'n v. Manley, 99 Colo. 153, 60 P.2d 913 (1936).
Neb.—In re Rodgers, 134 Neb. 832, 279 N.W. 800 (1938).

12 U.S.—Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932).

13 N.J.—Garneau v. Eggers, 113 N.J.L. 245, 174 A. 250 (N.J. Sup. Ct. 1934).
As to restrictions on use of streets based on the vehicle's weight, see § 1546.

As against bus lines

Tex.—Waid v. City of Fort Worth, 258 S.W. 1114 (Tex. Civ. App. Fort Worth 1923), writ refused, (Jan. 23, 1924).

14 U.S.—Railway Exp. Agency v. People of State of N.Y., 336 U.S. 106, 69 S. Ct. 463, 93 L. Ed. 533 (1949).

15 U.S.—Sproles v. Binford, 286 U.S. 374, 52 S. Ct. 581, 76 L. Ed. 1167 (1932).

16 Wis.—State v. Wetzel, 208 Wis. 603, 243 N.W. 768, 86 A.L.R. 274 (1932).

17 Ga.—State v. Moore, 259 Ga. 139, 376 S.E.2d 877 (1989).

Poultry vehicles distinguished

No rational basis existed for legislation that limited transportation of general freight to units no longer than 60 feet but allowed transportation of live poultry in vehicles up to 65 feet in length.

Ga.—State v. Moore, 259 Ga. 139, 376 S.E.2d 877 (1989).

18 Ill.—People v. Linde, 341 Ill. 269, 173 N.E. 361, 72 A.L.R. 997 (1930).

Iowa—State v. Wehde, 258 N.W.2d 347 (Iowa 1977).

Minn.—Anderson v. Lappegaard, 302 Minn. 266, 224 N.W.2d 504 (1974).

Wis.—State v. Consolidated Freightways Corp., 72 Wis. 2d 727, 242 N.W.2d 192 (1976).

As to regulations limiting the size and weight of vehicles, see § 1546.

Exemptions for certain products but not clay

Ga.—Department of Transp. v. Georgia Min. Ass'n, 252 Ga. 128, 311 S.E.2d 443 (1984).

Restriction held unconstitutional

A statute limiting the weight of vehicle loads containing any packages of more than stated size and weight, as well as the number of such packages per load, is unconstitutional as discriminating against the transportation of uncompressed cotton and similar commodities, not bound, boxed, or in containers.

U.S.—Sproles v. Binford, 52 F.2d 730 (S.D. Tex. 1931).

19 Ga.—Alexander v. State, 228 Ga. 179, 184 S.E.2d 450 (1971).

Minn.—Anderson v. Lappegaard, 302 Minn. 266, 224 N.W.2d 504 (1974).

20 U.S.—Whitney v. Johnson, 37 F. Supp. 65 (E.D. Ky. 1941), judgment aff'd, 314 U.S. 574, 62 S. Ct. 117, 86 L. Ed. 465 (1941).

21 Wash.—State v. Jones, 137 Wash. 556, 243 P. 1 (1926).

22 R.I.—Newman v. Mayor of City of Newport, 73 R.I. 385, 57 A.2d 173 (1948).

23 Neb.—Schindler v. Department of Motor Vehicles, 256 Neb. 782, 593 N.W.2d 295 (1999).

24 Okla.—City of Tulsa v. Martin, 1989 OK CR 24, 775 P.2d 824 (Okla. Crim. App. 1989).

25 Kan.—Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974).

N.J.—State v. McCourt, 131 N.J. Super. 283, 329 A.2d 577 (App. Div. 1974).

Or.—Boykin v. Ott, 10 Or. App. 210, 498 P.2d 815 (1972).

As to requiring liability insurance as a prerequisite to registering the motor vehicle or retaining a driver's license, see § 1532.

26 Ky.—Reeves v. Wright & Taylor, 310 Ky. 470, 220 S.W.2d 1007 (1949).

Mich.—Surtman v. Secretary of State, 309 Mich. 270, 15 N.W.2d 471 (1944).

As to requiring proof of financial responsibility as a prerequisite to registering the motor vehicle or retaining a driver's license, see § 1532.

27 Mass.—In re Opinion of the Justices, 251 Mass. 569, 147 N.E. 681 (1925).

28 Mich.—Surtman v. Secretary of State, 309 Mich. 270, 15 N.W.2d 471 (1944).

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16C C.J.S. Constitutional Law § 1547

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

L. Public Improvements and Services

2. Highways, Streets, and Bridges

§ 1547. Motorcycles

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3526(1), 3734

Statutes requiring that motorcycle owners and operators conform to certain standards that are not required of automobile owners and drivers do not deny equal protection.

Statutes requiring that motorcycle owners and operators conform to certain standards that are not required of automobile owners and drivers do not deny equal protection.[1] For example, regulations may prohibit the operation of motorcycles in designated areas[2] or require that motorcyclists wear protective head gear[3] without violating the Equal Protection Clause. However, other statutes requiring that motorcycle owners conform to different standards than required of automobile owners, such as with regard to compliance with odometer laws, have been held to violate equal protection.[4]

Footnotes

1 Kan.—Manzanares v. Bell, 214 Kan. 589, 522 P.2d 1291 (1974).
Parking of motor scooters

U.S.—Myslewski v. City of Reho both Beach, 987 F. Supp. 2d 499 (D. Del. 2013).

Parking, generally, see § 1548.

2 Cal.—People v. Deacon, 87 Cal. App. 3d Supp. 29, 151 Cal. Rptr. 277 (App. Dep't Super. Ct. 1978).

Mo.—American Motorcyclist Ass'n v. City of St. Louis, 622 S.W.2d 267 (Mo. Ct. App. E.D. 1981).

N.J.—Slegers-Forbes, Inc. v. New Jersey Highway Authority, 123 N.J. Super. 291, 302 A.2d 545 (App. Div. 1973).

3 U.S.—Simon v. Sargent, 346 F. Supp. 277 (D. Mass. 1972), judgment aff'd, 409 U.S. 1020, 93 S. Ct. 463, 34 L. Ed. 2d 312 (1972).

Idaho—State v. Albertson, 93 Idaho 640, 470 P.2d 300 (1970).

La.—Everhardt v. City of New Orleans, 253 La. 285, 217 So. 2d 400 (1968).

Miss.—City of Jackson v. Lee, 252 So. 2d 897 (Miss. 1971).

N.H.—State v. Merski, 113 N.H. 323, 307 A.2d 825 (1973).

Okla.—Elliott v. City of Oklahoma City, 1970 OK CR 56, 471 P.2d 944 (Okla. Crim. App. 1970).

Utah—State v. Acker, 26 Utah 2d 104, 485 P.2d 1038 (1971).

Motorized bicycle distinguished

A statutory requirement of protective headgear for a motorcyclist but not for a rider of a "motorized bicycle which is capable of a maximum design speed of no more than 25 miles per hour" did not violate equal protection.

Mass.—Com. v. Guest, 12 Mass. App. Ct. 941, 425 N.E.2d 779 (1981).

4 Neb.—State v. Garber, 249 Neb. 648, 545 N.W.2d 75 (1996).

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16C C.J.S. Constitutional Law § 1548

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L. Public Improvements and Services

2. Highways, Streets, and Bridges

§ 1548. Parking

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3526(1), 3734

Restrictions on the parking of vehicles have generally been upheld despite equal protection challenges.

Restrictions on the parking of vehicles[1] have generally been upheld despite equal protection challenges as has the granting of power to issue parking permits to residents in certain areas.[2]

Ordinances providing for the installation of parking meters on certain city streets, which equally apply to all persons located within the area described in the ordinance, do not deny equal protection[3] although they must provide equality with regard to the conditions on parking at the meter for a certain price.[4]

The exercise of some common sense and ordinary courtesy in the enforcement of highway regulations does not amount to a denial of equal protection.[5] Thus, no equal protection violation was found even though the police exercised reasonable discretion in impounding illegally parked cars[6] or only towed illegally parked vehicles in the case of an emergency or if the owner had two or more unpaid traffic or parking tickets.[7]

Footnotes

1 U.S.—Friedman v. Beame, 558 F.2d 1107 (2d Cir. 1977).
Ala.—McLaurine v. City of Birmingham, 247 Ala. 414, 24 So. 2d 755, 163 A.L.R. 962 (1946).
Me.—Nugent v. Town of Camden, 1998 ME 92, 710 A.2d 245 (Me. 1998).
Mass.—Com. v. Petralia, 372 Mass. 452, 362 N.E.2d 513 (1977).
Ohio—City of Dayton v. Hickle, 68 Ohio L. Abs. 161, 122 N.E.2d 40 (Ct. App. 2d Dist. Montgomery County 1953).
Okla.—Hirsh v. Oklahoma City, 94 Okla. Crim. 249, 234 P.2d 925 (1951).
Or.—Jarvill v. City of Eugene, 289 Or. 157, 613 P.2d 1 (1980).
Pa.—Love v. Borough of Stroudsburg, 528 Pa. 320, 597 A.2d 1137 (1991).
W. Va.—State ex rel. City of Charleston v. Coghill, 156 W. Va. 877, 207 S.E.2d 113 (1973).
Wis.—Dane County v. McManus, 55 Wis. 2d 413, 198 N.W.2d 667, 70 A.L.R.3d 1313 (1972).
Commercial vehicles
Okla.—Corbett-Barbour Drilling Co. v. Hanna, 1950 OK 200, 203 Okla. 372, 222 P.2d 376 (1950).
Motor scooters
U.S.—Myslewski v. City of Reho both Beach, 987 F. Supp. 2d 499 (D. Del. 2013).
Classification of parking violations as offenses or misdemeanors
Okla.—State v. Polk, 1997 OK CR 34, 941 P.2d 525 (Okla. Crim. App. 1997).
University students parking in residential area
Mont.—Associated Students of University of Montana v. City of Missoula, 261 Mont. 231, 862 P.2d 380, 87 Ed. Law Rep. 268 (1993).
Delegation of authority to private person
An ordinance prohibiting the driver or operator of a vehicle to permit it to stand in front of a certain railroad station, without the permission of the person having charge of the station, denies equal protection.
Ohio—City of Cincinnati v. Cook, 107 Ohio St. 223, 1 Ohio L. Abs. 260, 140 N.E. 655 (1923).

2 U.S.—County Bd. of Arlington County, Va. v. Richards, 434 U.S. 5, 98 S. Ct. 24, 54 L. Ed. 2d 4 (1977).

3 Ga.—Gardner v. City of Brunswick, 197 Ga. 167, 28 S.E.2d 135 (1943).
Mich.—Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W.2d 889 (1943).
S.C.—Owens v. Owens, 193 S.C. 260, 8 S.E.2d 339 (1940).

4 N.C.—State v. Scoggin, 236 N.C. 1, 72 S.E.2d 97 (1952).

5 Tex.—Miller v. Allen, 257 S.W.2d 127 (Tex. Civ. App. San Antonio 1953), dismissed.

6 Ala.—McLaurine v. City of Birmingham, 247 Ala. 414, 24 So. 2d 755, 163 A.L.R. 962 (1946).

7 U.S.—Sutton v. City of Milwaukee, 672 F.2d 644 (7th Cir. 1982).

16C C.J.S. Constitutional Law § 1549

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L. Public Improvements and Services

2. Highways, Streets, and Bridges

§ 1549. Signs and billboards

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3526, 3527, 3734

Various laws regulating roadside signs and billboards have been upheld as not violating equal protection.

Laws that require the removal of roadside signs do not violate equal protection if a deliberate and intentional plan of discrimination against a particular company is not shown.[1] Sign or billboard laws containing certain exceptions, such as allowing one directional sign to institutions of public interest[2] or an on-premises sign,[3] have been upheld as consistent with government goals. Billboard spacing regulations do not violate equal protection, even though different spacing requirements are prescribed for signs in incorporated and unincorporated areas, in view of the environmental and demographic differences between the areas.[4]

Grandfathering clause.

A grandfathering clause of an outdoor advertising act exempting billboards that were in place as of a certain from a ban on off-site billboard advertising does not violate the Equal Protection Clause as banning new off-site billboards but allowing legally

nonconforming billboards to remain furthers the State's significant interests in reducing blight and increasing traffic safety and its strong financial interest in not paying billboard owners just compensation for removal of the older ones.[5]

"Class of one" claim.

A bench billboard company is not similarly situated to other outdoor advertising companies, as required to establish a "class of one" equal protection claim against a city based on its enactment of an ordinance restricting placement of benches in the city's rights-of-way, where each company provides distinct product or service to a different customer base.[6]

Footnotes

1 Colo.—Orsinger Outdoor Advertising, Inc. v. Department of Highways of State of Colo., 752 P.2d 55 (Colo. 1988).
Idaho—Young Electric Sign Co. v. State ex rel. Winder, 135 Idaho 804, 25 P.3d 117 (2001).
Selective enforcement
Evidence that one company's signs were the only ones actually removed in one district by a state department of transportation established that the department selectively enforced its regulations in violation of the Equal Protection Clause.
Fla.—Florida Dept. of Transp. v. E.T. Legg & Co., 472 So. 2d 1336 (Fla. 4th DCA 1985).

2 Ga.—Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc., 266 Ga. 393, 467 S.E.2d 875 (1996).

3 Neb.—State Dept. of Roads v. Popco, Inc., 247 Neb. 440, 528 N.W.2d 281 (1995).

4 Colo.—Orsinger Outdoor Advertising, Inc. v. Department of Highways of State of Colo., 752 P.2d 55 (Colo. 1988).

5 U.S.—Maldonado v. Morales, 556 F.3d 1037 (9th Cir. 2009).

6 U.S.—Bench Billboard Co. v. City of Cincinnati, 675 F.3d 974 (6th Cir. 2012).

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3. Use of Public Facilities and Services

§ 1550. Validity under equal protection laws of regulation of use of public facilities and services, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3521 to 3534

A state may regulate the use of its public facilities, but must do so in a nondiscriminatory manner, unless some appropriate governmental interest is furthered by a differential course of treatment.

A state or its instrumentalities may regulate the use of its public facilities or services, but must act in a reasonable and nondiscriminatory manner,[1] unless some appropriate governmental interest is suitably furthered by a differential course of treatment.[2] The rational basis standard[3] applies to an equal protection challenge to such matters as regulation of use of recreational land,[4] regulation of the display art work on municipal property,[5] use of an automated traffic enforcement system,[6] the imposition by a municipality of traffic-violation fines greater than the fines permitted by state statute,[7] the provision of fire service in outlying areas,[8] and a city's refusal to extend its sewer system.[9]

Courts have upheld, in the face of equal protection challenges, fees imposed on seaplanes using a float at an airport to land;[10] the denial of reimbursement of landing fees that were not protested;[11] allowing an unpaid airport manager to operate

a private business at the airport;[12] charging telecommunications companies, but not other utilities, a fee for using the public right of way, where the telecommunications companies applied for a disproportionately high number of permits and caused a disproportionately high amount of damage and disruption;[13] including multiunit housing structures within the residential category for water and sewage charges;[14] requiring individual water meters in condominium units, although they are not required in rental apartments;[15] restricting who may check out books from a library;[16] banning certain commercial, but not recreational, craft on a bay;[17] and restrictions on nude bathing on public beaches.[18]

Footnotes

1 U.S.—Brown v. State of La., 383 U.S. 131, 86 S. Ct. 719, 15 L. Ed. 2d 637 (1966).

2 U.S.—Police Dept. of City of Chicago v. Mosley, 408 U.S. 92, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972).

3 § 1279.

4 Alaska—Reichmann v. State, Dept. of Natural Resources, 917 P.2d 1197 (Alaska 1996).
Prohibition of firearms in municipal park
U.S.—Warden v. Nickels, 697 F. Supp. 2d 1221 (W.D. Wash. 2010).
Privately owned ski resort located largely on Forest Service land
Utah—Wasatch Equality v. Alta Ski Lifts Co., 2014 WL 4743837 (D. Utah 2014).
Approval of manufacturer's bear-resistant containers
U.S.—Ursack Inc. v. Sierra Interagency Black Bear Group, 639 F.3d 949 (9th Cir. 2011).

5 U.S.—Travis v. Park City Mun. Corp., 565 F.3d 1252 (10th Cir. 2009).

6 D.C.—DeVita v. District of Columbia, 74 A.3d 714 (D.C. 2013), cert. denied, 135 S. Ct. 728, 190 L. Ed. 2d 443 (2014).
Fla.—State v. Arrington, 95 So. 3d 324 (Fla. 4th DCA 2012).

7 U.S.—Mills v. City of Grand Forks, 614 F.3d 495 (8th Cir. 2010).

8 Miss.—Westbrook v. City of Jackson, 665 So. 2d 833 (Miss. 1995).

9 S.C.—Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 593 S.E.2d 462 (2004).

10 Alaska—Ketchikan Gateway Borough, Alaska v. Breed, 639 P.2d 995 (Alaska 1981).

11 Alaska—Era Aviation, Inc. v. Campbell, 915 P.2d 606 (Alaska 1996).

12 Ark.—Everett v. City of Wynne, 292 Ark. 306, 730 S.W.2d 212 (1987).

13 Ga.—Bellsouth Telecommunications, Inc. v. Cobb County, 277 Ga. 314, 588 S.E.2d 704 (2003).

14 Mich.—Brittany Park Apartments v. Harrison Charter Tp., 432 Mich. 798, 443 N.W.2d 161 (1989).

15 Mass.—Cohen v. Board of Water Com'rs, Fire Dist. No. 1, South Hadley, 411 Mass. 744, 585 N.E.2d 737 (1992).

16 Wash.—City of Clarkston v. Asotin County Rural Library Bd., 18 Wash. App. 869, 573 P.2d 382 (Div. 3 1977).

17 Haw.—Kaneohe Bay Cruises, Inc. v. Hirata, 75 Haw. 250, 861 P.2d 1 (1993).

18 U.S.—Williams v. Kleppe, 539 F.2d 803 (1st Cir. 1976).

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L. Public Improvements and Services

3. Use of Public Facilities and Services

§ 1551. Residence requirements

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3531

While certain government facilities may be open to residents on more favorable terms, denying their use to new residents violates equal protection, by infringing the fundamental right to travel.

A government body may charge a higher fee to nonresidents for using certain public facilities without violating the Equal Protection Clause where residents also pay taxes to support the facilities and would otherwise pay a disproportionate share of the cost.[1]

In providing services for residents, a governmental unit may not, consistently with the Equal Protection Clause, treat newly arrived residents less favorably, by apportioning services according to the past tax contributions of its citizens; because these requirements touch the fundamental right of interstate movement, their constitutionality must be judged by applying the compelling state interest standard, and under this standard, waiting period requirements violate equal protection.[2]

Footnotes

1 Ill.—Broeckl v. Chicago Park Dist., 131 Ill. 2d 79, 136 Ill. Dec. 106, 544 N.E.2d 792 (1989).

2 U.S.—Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S. Ct. 1076, 39 L. Ed. 2d 306 (1974); Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) (overruled in part on other grounds by, Edelman v. Jordan, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)).

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3. Use of Public Facilities and Services

§ 1552. Water and sewer connections

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3532

While a wholly arbitrary condition pertaining to permits and fees to connect to water and sewer systems violates equal protection, most of these requirements have been upheld.

A homeowner may assert an equal protection claim against a village based on allegations that it intentionally demanded a larger easement as a condition for connecting his or her property to a municipal water supply than required from similarly situated property owners and that the village's demand was irrational and wholly arbitrary.[1] Other classifications regarding permits to connect into a water or sewer system have been upheld.[2]

A claim by subdivision residents' claim that a municipality's refusal to supply water to the subdivision violated the Equal Protection Clause does not involve suspect class or fundamental right and thus is subject to rational basis review.[3] The rational basis test also applies to purely economic decisions involving sewer charges.[4] While a court has struck down, on equal protection grounds, an ordinance providing that homes constructed and occupied after its effective date would be required to pay additional sewer fees, impliedly exempting earlier structures,[5] it has more generally been held a statute permitting a sanitary district to assess connection charges against new and additional users for the purpose of expanding the system does not deny equal

protection,[6] since the appropriate class is new customers, not all residents, and requiring new customers to pay a portion of the cost of the expansion was fair, since existing customers paid to build the current system, even though all would benefit from the expansion.[7]

An ordinance requiring the payment of sewer installation costs was upheld, where all entities that had previously refused to allow the sewer district to connect them for free were treated alike, and the complainant was notified that, after a certain period, it would be responsible for connection costs, because the unused portion of the allotted funds for the work would be returned to the State.[8] A water development charge based on when a building permit was acquired, rather than the date of connecting to the water service, does not deny equal protection.[9] Charging different fees for tapping into a sewer system based upon the property's location also does not violate equal protection.[10]

Footnotes

1 U.S.—Village of Willowbrook v. Olech, 528 U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000).

2 Mont.—Mogan v. City of Harlem, 238 Mont. 1, 775 P.2d 686 (1989).

Vt.—Bryant v. Town of Essex, 152 Vt. 29, 564 A.2d 1052 (1989).

Consideration for water connection

An ordinance under which a landowner was required to transfer shares in a mutual irrigation company to the city in exchange for an optional connection to the city's system did not violate a state constitutional provision on uniform operation of the laws, despite that residents without shares could pay cash for a connection, as the distinction was reasonably related to the city's legitimate goal of protecting the viability of its drinking water system by providing a secondary system for irrigation, and the city needed the water shares to supply its secondary system adequately.

Utah—Whitmer v. City of Lindon, 943 P.2d 226 (Utah 1997).

3 U.S.—Srail v. Village of Lisle, Ill., 588 F.3d 940 (7th Cir. 2009).

4 R.I.—Newport Court Club Associates v. Town Council of the Town of Middletown, 800 A.2d 405 (R.I. 2002).

Impact fees and capital-recovery fees

Ala.—St. Clair County Home Builders Ass'n v. City of Pell City, 61 So. 3d 992 (Ala. 2010).

5 Mich.—Starline Const. Co. v. City of Swartz Creek, 393 Mich. 250, 224 N.W.2d 53 (1974).

6 Ill.—Marriott v. Springfield Sanitary Dist., 43 Ill. App. 3d 869, 2 Ill. Dec. 499, 357 N.E.2d 666 (4th Dist. 1976).

Ky.—McCoy v. City of Florence, 409 S.W.2d 511 (Ky. 1966).

S.C.—J.K. Const., Inc. v. Western Carolina Regional Sewer Authority, 336 S.C. 162, 519 S.E.2d 561 (1999).

7 S.C.—J.K. Const., Inc. v. Western Carolina Regional Sewer Authority, 336 S.C. 162, 519 S.E.2d 561 (1999).

8 Miss.—Croke v. Southgate Sewer Dist., 857 So. 2d 774 (Miss. 2003).

9 Ariz.—Home Builders Ass'n of Central Arizona, Inc. v. City of Scottsdale, 116 Ariz. 340, 569 P.2d 282 (Ct. App. Div. 1 1977).

10 Ind.—Winney v. Board of Com'rs of Vigo County, 174 Ind. App. 624, 369 N.E.2d 661 (1977).

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L. Public Improvements and Services

3. Use of Public Facilities and Services

§ 1553. Garbage collection

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3533

Ordinances specifying who is entitled to municipal garbage collection service and the rates charged for it must conform to equal protection requirements.

While ordinances distinguishing among those eligible to receive public garbage collection services have been upheld as reasonable,[1] other ordinances arbitrarily distinguishing between apartment buildings eligible for garbage service and ineligible "commercial" apartment buildings, based solely on the number of units, have been found to violate equal protection.[2] An ordinance requiring that all water customers use the town's garbage service, but which did not require others to use it, violated equal protection where the classification did not bear a fair and substantial relationship to the promotion of public health by requiring a sanitary means of garbage disposal.[3]

Equal protection is not violated by a nondiscriminatory waste processing fee, which is rationally related to the legitimate governmental purpose of defraying a waste authority's costs.[4] Directly billing landlords for a solid waste disposal fee, when a lease was not recorded, did not violate an office building owner's equal protection rights because the landlord could choose to enter into written leases and file them with the county.[5] However, the imposition of a landfill fee on the basis that a city resident

had an individual electrical meter violated equal protection, where owners or occupiers of residences without an individual meter were not charged the fee, since the classification bore no relationship to the city's objective of raising revenue for closing the landfill.[6] An ordinance setting fees for solid waste disposal violated equal protection, where there was no explanation why various types of businesses paid different rates.[7]

A municipal garbage-collection scheme that requires all residents to abide by the same curbside requirements facially adheres to the guarantees of equal protection.[8] An ordinance requiring that recyclable materials be separated did not violate the equal protection rights of a commercial waste hauler.[9]

Footnotes

1 U.S.—Goldstein v. City of Chicago, 504 F.2d 989 (7th Cir. 1974).
Dumpster service refused
N.J.—Pleasure Bay Apartments v. City of Long Branch, 66 N.J. 79, 328 A.2d 593 (1974).

2 Mich.—Alexander v. City of Detroit, 392 Mich. 30, 219 N.W.2d 41 (1974).

3 Ala.—Town of Eclectic v. Mays, 547 So. 2d 96 (Ala. 1989).

4 W. Va.—Wetzel County Solid Waste Authority v. West Virginia Div. of Natural Resources, 195 W. Va. 1, 462 S.E.2d 349 (1995).

5 S.C.—Skyscraper Corp. v. County of Newberry, 323 S.C. 412, 475 S.E.2d 764 (1996).

6 Neb.—DeCoste v. City of Wahoo, 255 Neb. 266, 583 N.W.2d 595 (1998).

7 Va.—Estes Funeral Home v. Adkins, 266 Va. 297, 586 S.E.2d 162 (2003).

8 N.J.—Berk Cohen Associates at Rustic Village, LLC v. Borough of Clayton, 199 N.J. 432, 972 A.2d 1141 (2009).

9 Me.—Tri-State Rubbish, Inc. v. Town of New Gloucester, 634 A.2d 1284 (Me. 1993).

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L. Public Improvements and Services

3. Use of Public Facilities and Services

§ 1554. Public housing

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3523

Eligibility conditions to live in public housing must conform to equal protection requirements.

A denial of admission to public housing may not be predicated on requirements that deny equal protection.[1] Equal protection has been violated by requirements that at least one member of a family applying for public housing be an adult citizen,[2] leases be cosigned by a county department of social services,[3] or welfare recipients pay higher rents where nonworking tenants not on welfare also enjoyed lower rates.[4] On the other hand, even if a public housing authority's properties receive preferential treatment from a city with respect to maintenance, the city has a rational basis for permitting the authority to manage its own repairs, and thus any such preferential treatment does not violate equal protection rights of lessors of city-regulated low income housing where the city's resources are limited, and the housing authority has a demonstrated record of maintaining its properties.[5] Also, the application of a statute governing eviction of mobile home residents to a mobile home park owned by a city does not violate the equal protection rights of evicted residents where the city is subject to the same laws, and can exercise the same rights, as any private owner of a mobile home park.[6]

Footnotes

1 U.S.—McDougal v. Tamsberg, 308 F. Supp. 1212 (D.S.C. 1970).

2 U.S.—Lopez v. White Plains Housing Authority, 355 F. Supp. 1016 (S.D. N.Y. 1972).

3 U.S.—Battle v. Municipal Housing Authority for City of Yonkers, 53 F.R.D. 423 (S.D. N.Y. 1971).

4 U.S.—Hammond v. Housing Authority and Urban Renewal Agency of Lane County, 328 F. Supp. 586 (D. Or. 1971).

5 U.S.—Gallagher v. Magner, 619 F.3d 823 (8th Cir. 2010).

6 Fla.—DeFalco v. City of Hallandale Beach, 18 So. 3d 1126 (Fla. 4th DCA 2009).

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16C C.J.S. Constitutional Law VI XVII M Refs.

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PART VI. Privileges and Immunities; Equal Protection

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Topic Summary | Correlation Table

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law
A.L.R. Index, Equal Protection
West's A.L.R. Digest, Constitutional Law 3166, 3194, 3603, 3686, 3694, 3738, 3745 to 3761

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16C C.J.S. Constitutional Law § 1555

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1555. Validity under equal protection laws of statutes pertaining to liability, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3745, 3746, 3760, 3761

The Equal Protection Clause is not necessarily violated by statutes that impose liabilities in excess of those prescribed by the common law or abolish common-law actions.

Subject to the general rules governing classification and discrimination,[1] a legislature may, without denying equal protection, impose on persons and corporations liabilities in excess of those prescribed by the common law.[2] The rational basis test is applicable to challenges to the abrogation of common-law causes of action,[3] and a common-law cause of action may be abolished without a provision being made for a substitute remedy if the statute is rationally related to a permissible legislative objective.[4]

A limitation on liability for nuclear accidents resulting from the operation of federally licensed private nuclear power plants may be validly imposed.[5] A provision that one entitled to veterans' benefits is not under disability by reason of minority to contract with respect to those benefits is not violative of the Equal Protection Clause.[6]

Statutes imposing greater liabilities on corporations than on individuals have been sustained,[7] such as an antitrust law imposing different or greater penalties on corporations than on individuals.[8]

Footnotes

1 §§ 1267 to 1274.

2 U.S.—Farmers Irrigation Dist. v. State of Nebraska ex rel. O'Shea, 244 U.S. 325, 37 S. Ct. 630, 61 L. Ed. 1168 (1917).
Ala.—Atkins v. Curtis, 259 Ala. 311, 66 So. 2d 455 (1953).
Ariz.—Valley Nat. Bank of Phoenix v. Glover, 62 Ariz. 538, 159 P.2d 292 (1945).
Conn.—Second Nat. Bank v. Loftus, 121 Conn. 454, 185 A. 423 (1936).
Del.—Bispham v. Mahony, 36 Del. 318, 175 A. 320 (Super. Ct. 1934).
Ga.—National Factor & Inv. Corp. v. State Bank of Cochran, 224 Ga. 535, 163 S.E.2d 817 (1968).
Me.—Portland Pipe Line Corp. v. Environmental Imp. Com'n, 307 A.2d 1 (Me. 1973).
Mass.—Service Mut. Liability Ins. Co. v. Aronofsky, 308 Mass. 249, 31 N.E.2d 837 (1941).
Mich.—Auditor General v. Hall, 300 Mich. 215, 1 N.W.2d 516, 139 A.L.R. 1022 (1942).
Miss.—New York Life Ins. Co. v. Majet, 178 Miss. 440, 173 So. 412 (1937).
Neb.—Boone County Old Age Assistance Bd. of Boone County v. Myhre, 149 Neb. 669, 32 N.W.2d 262 (1948).
N.J.—Airwick Industries, Inc. v. Carlstadt Sewerage Authority, 57 N.J. 107, 270 A.2d 18 (1970).
N.M.—Middle Rio Grande Water Users Ass'n v. Middle Rio Grande Conservancy District, 1953-NMSC-035, 57 N.M. 287, 258 P.2d 391 (1953).

3 W. Va.—Robinson v. Charleston Area Medical Center, Inc., 186 W. Va. 720, 414 S.E.2d 877 (1991).

4 Mass.—Klein v. Catalano, 386 Mass. 701, 437 N.E.2d 514 (1982).
As to equal protection challenges to statutes abrogating or substituting remedies, see § 1384.

5 U.S.—Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978).

6 Ariz.—Valley Nat. Bank of Phoenix v. Glover, 62 Ariz. 538, 159 P.2d 292 (1945).

7 U.S.—Hammond Packing Co. v. State of Ark., 212 U.S. 322, 29 S. Ct. 370, 53 L. Ed. 530 (1909).

8 Ky.—Commonwealth v. Hatfield Coal Co., 186 Ky. 411, 217 S.W. 125 (1919).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1556. Liability and immunity of government entities

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3745 to 3761

A statute imposing liability on units of local government is generally consistent with equal protection, the exercise of sovereign immunity does not violate equal protection, and distinctions in a law waiving immunity must have a rational basis.

A legislature may, without denying equal protection, require that counties or municipalities recognize their legal obligations.[1] For instance, it may impose on liability for damage to property by a mob or riot[2] or limit a state's liability for interest on judgments[3] without violating equal protection.

The doctrine of state sovereign immunity does not create an invidious classification,[4] and the different treatment accorded to the government and private parties as a result of sovereign immunity does not violate equal protection.[5]

The waiver by a state of its sovereign immunity in some circumstances, and not in others, does not, in itself, constitute a denial of equal protection,[6] and the rational basis test[7] applies.[8] Equal protection principles do not require that a government's tort

liability be coextensive with that of private parties.[9] A statute limiting the amount of a tort recovery from governmental units upon their waiver of sovereign immunity does not deny equal protection.[10] However, once sovereign immunity has been waived, even partially, any classification regarding the waiver must conform to equal protection requirements.[11] For instance, a higher damage cap for malpractice claims against government-employed physicians than that otherwise applicable under a tort claims act meets the rational basis test where the higher cap was based on legislative recognition of the greater damages that result from medical malpractice than from other torts.[12]

A constitutional or statutory provision granting[13] or reimposing[14] sovereign or governmental immunity does not necessarily deny equal protection. Distinctions among types of government units do not necessarily violate equal protection.[15] However, a statute that grants immunity only to a particular municipality[16] or to an airport authority in counties having more than a specified population[17] violates equal protection. A statute precluding subrogation claims against political subdivisions has been upheld.[18]

The prospective abolition of the doctrine of sovereign immunity does not deny equal protection to persons whose causes of action arose before the effective date of the change in the law.[19] While a statute excluding from the general abrogation of sovereign immunity with respect to tort claims those persons covered by a workers' compensation law has been upheld,[20] a state violated equal protection by preserving municipal immunity from tort suits brought by private employees covered by workers' compensation since the distinction between those who received workers' compensation and private insurance benefits was not rationally related to the assumed purposes of assuring that public funds benefit only the injured party and not his or her insurer and of protecting municipalities' financial integrity.[21]

While a provision of a governmental claims act providing immunity from claims arising from the design, construction, and maintenance of highways has been found to have a reasonable relation to the legitimate legislative objectives of conserving public funds and preserving a fair and viable system of compensating persons injured by governmental actions,[22] another statute providing municipalities with complete immunity from tort liability resulting from negligence incident to the ownership or maintenance of highways, streets, and sidewalks was held to violate equal protection because it provided communities with too broad an exemption from liability for negligence and arbitrarily denied some injured persons their rights under a civil remedy provision of a state constitution.[23] An exclusion of liability for negligent failure to post signs may be rationally based on the discretionary function distinction generally recognized under tort claims acts.[24]

CUMULATIVE SUPPLEMENT

Cases:

Out-of-state Franchise Tax Board was not completely immune from liability for taxpayer's fraud action, but rather Board was entitled to statutory cap on damages of $50,000; complete immunity under out-of-state law was inconsistent with in-state law, but states' laws were consistent with regard to damages awards greater than $50,000. Cal. Gov't Code § 860.2; Nev. Rev. St. § 41.035(1) (1987). Franchise Tax Board of State of California v. Hyatt, 407 P.3d 717 (Nev. 2017).

Upon claim that preindictment delay constitutes a due process violation, the defendant has the initial burden to show that he was substantially and actually prejudiced due to the delay, and the burden then shifts to the state to produce evidence of a justifiable reason for the delay; thereafter, the due process inquiry involves a balancing test by the court, weighing the reasons for the delay against the prejudice to the defendant, in light of the length of the delay. U.S.C.A. Const.Amend. 14. State v. McFeeture, 2015-Ohio-1814, 36 N.E.3d 689 (Ohio Ct. App. 8th Dist. Cuyahoga County 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Joslin Mfg. Co. v. City of Providence, 262 U.S. 668, 43 S. Ct. 684, 67 L. Ed. 1167 (1923).

2 U.S.—City of Chicago v. Sturges, 222 U.S. 313, 32 S. Ct. 92, 56 L. Ed. 215 (1911).
Md.—City of Baltimore v. Silver, 263 Md. 439, 283 A.2d 788 (1971).
N.J.—A. & B. Auto Stores of Jones Street, Inc. v. City of Newark, 59 N.J. 5, 279 A.2d 693 (1971).

3 Iowa—Cook v. State, 476 N.W.2d 617 (Iowa 1991).

4 Del.—Sadler v. New Castle County, 565 A.2d 917 (Del. 1989).
N.D.—Leadbetter v. Rose, 467 N.W.2d 431, 66 Ed. Law Rep. 787 (N.D. 1991) (overruled on other grounds by, Bulman v. Hulstrand Const. Co., Inc., 521 N.W.2d 632 (N.D. 1994)).
Suit against State
Equal protection is not violated by a statute barring tort recovery against a state, and a tort victim does not have a fundamental right to sue the State.
Wyo.—Troyer v. State, Dept. of Health and Social Services, Div. of Vocational Rehabilitation, 722 P.2d 158 (Wyo. 1986).

5 U.S.—Harrington v. Wilber, 670 F. Supp. 2d 958 (S.D. Iowa 2009).
Ga.—Porter v. Guill, 298 Ga. App. 782, 681 S.E.2d 230 (2009).
Ohio—Pesta v. Parma, 2010-Ohio-4897, 2010 WL 3931125 (Ohio Ct. App. 8th Dist. Cuyahoga County 2010).
Wash.—Bellevue School Dist. No. 405 v. Brazier Const. Co., 103 Wash. 2d 111, 691 P.2d 178, 21 Ed. Law Rep. 734 (1984).

6 N.Y.—Dillenburg v. State, 55 A.D.3d 1363, 865 N.Y.S.2d 437 (4th Dep't 2008).
Ohio—Conley v. Shearer, 64 Ohio St. 3d 284, 1992-Ohio-133, 595 N.E.2d 862 (1992).
Tex.—Alobaidi v. University of Texas Health Science Center at Houston, 243 S.W.3d 741, 229 Ed. Law Rep. 944 (Tex. App. Houston 14th Dist. 2007).
Only if risk insured
Del.—Doe v. Cates, 499 A.2d 1175 (Del. 1985).
Qualified immunity
W. Va.—Randall v. Fairmont City Police Dept., 186 W. Va. 336, 412 S.E.2d 737 (1991).
Turnpike
The denial of recovery by a motorist for injuries arising from defects in a road operated by a turnpike commission on the ground of sovereign immunity is not a denial of equal protection even though the commission may be subject to suit in equity for damages to a landowner.
U.S.—Harris v. Pennsylvania Turnpike Commission, 410 F.2d 1332 (3d Cir. 1969).
Park
A section of a tort immunity act precluding liability based on a condition of public property used as a park, playground, or open area for recreational purposes does not violate equal protection.
Ill.—Davis v. Chicago Housing Authority, 136 Ill. 2d 296, 144 Ill. Dec. 224, 555 N.E.2d 343 (1990).

7 § 1279.

8 Colo.—State By and Through Colorado State Claims Bd. of Div. of Risk Management v. DeFoor, 824 P.2d 783 (Colo. 1992).
Conn.—Ryszkiewicz v. City of New Britain, 193 Conn. 589, 479 A.2d 793 (1984).
Idaho—Harris v. State, Dept. of Health & Welfare, 123 Idaho 295, 847 P.2d 1156 (1992).
Minn.—Bernthal v. City of St. Paul, 376 N.W.2d 422 (Minn. 1985).
Wyo.—White v. State, 784 P.2d 1313 (Wyo. 1989).

9 Colo.—Lee v. Colorado Dept. of Health, 718 P.2d 221 (Colo. 1986).
Okla.—Childs v. State ex rel. Oklahoma State University, 1993 OK 18, 848 P.2d 571 (Okla. 1993).

10 Colo.—State By and Through Colorado State Claims Bd. of Div. of Risk Management v. DeFoor, 824 P.2d 783 (Colo. 1992).

Fla.—Cauley v. City of Jacksonville, 403 So. 2d 379 (Fla. 1981).
Minn.—Snyder v. City of Minneapolis, 441 N.W.2d 781 (Minn. 1989).
Nev.—State v. Kallio, 92 Nev. 665, 557 P.2d 705 (1976).
N.H.—Cargill's Estate v. City of Rochester, 119 N.H. 661, 406 A.2d 704 (1979).
Pa.—Lyles v. Com., Dept. of Transp., 512 Pa. 322, 516 A.2d 701 (1986).
S.C.—Wright v. Colleton County School Dist., 301 S.C. 282, 391 S.E.2d 564, 60 Ed. Law Rep. 238 (1990).
Tenn.—Crowe v. John W. Harton Memorial Hospital, 579 S.W.2d 888 (Tenn. Ct. App. 1979).
Wis.—Sambs v. City of Brookfield, 97 Wis. 2d 356, 293 N.W.2d 504 (1980).

11 N.H.—City of Dover v. Imperial Cas. & Indem. Co., 133 N.H. 109, 575 A.2d 1280 (1990).
N.D.—Patch v. Sebelius, 320 N.W.2d 511 (N.D. 1982).
Wash.—Jenkins v. State, 85 Wash. 2d 883, 540 P.2d 1363 (1975).
Wis.—Stanhope v. Brown County, 90 Wis. 2d 823, 280 N.W.2d 711 (1979).

12 S.C.—Foster v. South Carolina Dept. of Highways and Public Transp., 306 S.C. 519, 413 S.E.2d 31 (1992).

13 Ill.—Williams v. Medical Center Commission, 60 Ill. 2d 389, 328 N.E.2d 1 (1975).
Kan.—Cross v. City of Kansas City, 230 Kan. 545, 638 P.2d 933 (1982).
N.H.—Sousa v. State, 115 N.H. 340, 341 A.2d 282 (1975).
N.M.—Dairyland Ins. Co., Inc. v. Board of County Com'rs of Bernalillo County, 88 N.M. 180, 1975-NMCA-086, 538 P.2d 1202 (Ct. App. 1975).
Ohio—Williams v. City of Columbus, 33 Ohio St. 2d 75, 62 Ohio Op. 2d 434, 294 N.E.2d 891 (1973).
Okla.—Neal v. Donahue, 1980 OK 82, 611 P.2d 1125 (Okla. 1980).
S.D.—High-Grade Oil Co., Inc. v. Sommer, 295 N.W.2d 736 (S.D. 1980).
Wis.—Yotvat v. Roth, 95 Wis. 2d 357, 290 N.W.2d 524 (Ct. App. 1980).

Counties

Ga.—Williams v. Georgia Power Co., 233 Ga. 517, 212 S.E.2d 348 (1975).
Mo.—Wood v. Jackson County, 463 S.W.2d 834 (Mo. 1971).

School districts

Mo.—O'Dell v. School Dist. of Independence, 521 S.W.2d 403 (Mo. 1975).

Crime on bus

A statute that immunized a transit authority from liability for injuries sustained by a bus passenger as a result of criminal acts committed by third parties does not violate equal protection as the taxpayers' substantial involvement in the funding of public transportation provided a rational basis for differentiating between the liability of governmental and private carriers upon failure to prevent criminal assaults on passengers.
Ill.—Bilyk v. Chicago Transit Authority, 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

14 Kan.—Brown v. Wichita State University, 219 Kan. 2, 547 P.2d 1015 (1976).

15 **Transit authority and other government units**

Ill.—Bilyk v. Chicago Transit Authority, 125 Ill. 2d 230, 125 Ill. Dec. 822, 531 N.E.2d 1 (1988).

City consolidated with county

The consolidation of a city and county, under a provision that the consolidated government would be subject to the tort liability applicable to counties, did not violate equal protection on the basis that it denied a remedy in that governmental unit while redress was available in any other municipality in the state.
Ga.—Bowen v. Columbus, 256 Ga. 462, 349 S.E.2d 740 (1986).

16 Ala.—Peddycoart v. City of Birmingham, 354 So. 2d 808 (Ala. 1978).
Conn.—Ryszkiewicz v. City of New Britain, 193 Conn. 589, 479 A.2d 793 (1984).

17 Ala.—Gaines v. Huntsville-Madison County Airport Authority, 581 So. 2d 444 (Ala. 1991).

18 Ohio—Menefee v. Queen City Metro, 49 Ohio St. 3d 27, 550 N.E.2d 181 (1990).

19 U.S.—Antonello v. Wunsch, 500 F.2d 1260 (10th Cir. 1974).
Idaho—Munson v. State, Dept. of Highways, 96 Idaho 38, 524 P.2d 166 (1974).
Mo.—Spearman v. University City Public School Dist., 617 S.W.2d 68 (Mo. 1981).
N.J.—Perillo v. Dreher, 126 N.J. Super. 264, 314 A.2d 74 (App. Div. 1974).

20 Or.—Edwards v. State By and Through Military Dept., 8 Or. App. 620, 494 P.2d 891 (1972).

21 Minn.—Bernthal v. City of St. Paul, 376 N.W.2d 422 (Minn. 1985).

22 Wyo.—White v. State, 784 P.2d 1313 (Wyo. 1989).

23 N.H.—City of Dover v. Imperial Cas. & Indem. Co., 133 N.H. 109, 575 A.2d 1280 (1990).

24 Colo.—Willer v. City of Thornton, 817 P.2d 514 (Colo. 1991).

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XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1557. Charitable immunity

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3747, 3752, 3754

Protecting a charity's funds justifies charitable immunity or caps on charitable liability challenged on equal protection grounds.

The charitable immunity doctrine does not violate equal protection since it benefits the charitable beneficiaries by protecting the charity's assets.[1] The object of protecting the funds of charitable institutions so they can be devoted to charitable purposes also justifies statutes imposing a cap on a charity's liability[2] despite contentions that the cap discriminates against persons whose claims exceed the limitation, and the dollar amount does not differentiate among charitable organizations of different sizes, risks, or resources.[3]

A statute waiving charitable immunity does not deny equal protection to persons whose causes of action arose before the effective date of the abolition of the doctrine.[4]

Footnotes

1 Ga.—Ponder v. Fulton-DeKalb Hosp. Authority, 256 Ga. 833, 353 S.E.2d 515 (1987).

2 Mass.—English v. New England Medical Center, Inc., 405 Mass. 423, 541 N.E.2d 329 (1989).
S.C.—Doe v. American Red Cross Blood Services, S.C. Region, 297 S.C. 430, 377 S.E.2d 323 (1989).

3 S.C.—Doe v. American Red Cross Blood Services, S.C. Region, 297 S.C. 430, 377 S.E.2d 323 (1989).

4 Mo.—Swinford v. Bliley, 513 S.W.2d 381 (Mo. 1974).

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XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1558. Liability for support or public care

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3748

Statutes or governmental policies relating to the support of persons and liability for public care that have a rational basis do not violate the Equal Protection Clause.

Statutes or governmental policies relating to the support of persons and liability for public care that have a rational basis do not violate the Equal Protection Clause.[1]

A requirement that relatives contribute to the support of an indigent person has been upheld as against the contention that it is a violation of equal protection in that nonresident relatives are not subjected to liability.[2] Statutes creating a general duty of children to support needy parents[3] or providing for contribution by adult children in partial reimbursement of the public for the support of a parent[4] do not deny equal protection.

Requiring payment by mental hospital patients of the cost of involuntary confinement, which is not required of prisoners in penal institutions,[5] or the exclusion of patients in custody on criminal charges from a statute providing for charges for persons

in state mental institutions,[6] does not violate equal protection. Requirements that a defendant pay the cost of confinement and treatment in a state hospital after being deemed incompetent to stand trial,[7] as well as for the period after acquittal by reason of insanity until cured,[8] have been considered valid as comporting with equal protection although a statute providing that persons confined to mental institutions after an acquittal by reason of insanity are liable for the expense of their support and treatment was ruled unconstitutional where the expenses of persons imprisoned for crimes were borne by the public.[9]

While the assessment and collection of fees against parents for the incarceration and rehabilitation of juvenile delinquents was held to violate equal protection on the basis that the purpose of confinement is to protect society and the burden should be borne by all taxpayers,[10] elsewhere, a reasonable basis was found for such a statute based on the State's goal of rehabilitating the children rather than a primary purpose of protecting society by removing a criminal.[11] It has also been recognized that while parents may not be assessed the costs of maintaining state institutions, they may be compelled to reimburse the state, in accordance with their ability, for the actual cost of a child's support and maintenance while being treated in a group home.[12] A statute requiring that natural parents pay a portion of the cost of maintaining a handicapped child in a foster home, while relieving parents of similarly handicapped persons placed in state residential schools and group homes of liability, has been upheld.[13]

A provision for reimbursement from the estate of a person furnished old age assistance[14] or of a mental incompetent who has been furnished care at a state hospital[15] is valid.

The common-law doctrine of necessaries, under which a husband was liable for his wife's necessary expenses, violates equal protection as the doctrine was applied to husbands only, but to cure the defect, a court expanded the doctrine to apply to husbands and wives equally rather than completely abolish it.[16]

Equal protection is not denied by statutes curtailing alimony if the former spouse enters into a relationship akin to a marriage.[17]

Footnotes

1 Cal.—Ganschow v. Ganschow, 14 Cal. 3d 150, 120 Cal. Rptr. 865, 534 P.2d 705 (1975).
Ill.—Department of Mental Health v. Coty, 38 Ill. 2d 602, 232 N.E.2d 686 (1967).
Mich.—State Revenue Division of Dept. of Treasury v. Raseman's Estate, 18 Mich. App. 91, 170 N.W.2d 503 (1969).
N.H.—Niemiec v. King, 109 N.H. 586, 258 A.2d 356 (1969).
N.C.—Graham v. Reserve Life Ins. Co., 274 N.C. 115, 161 S.E.2d 485 (1968).
Or.—Matter of Rankin, 30 Or. App. 239, 566 P.2d 1209 (1977).
Utah—Harris v. Harris, 585 P.2d 435 (Utah 1978).

2 Ala.—Atkins v. Curtis, 259 Ala. 311, 66 So. 2d 455 (1953).
Collection of support from only one son
D.C.—Groover v. Essex County Welfare Bd., 264 A.2d 143 (D.C. 1970).

3 Cal.—Swoap v. Superior Court, 10 Cal. 3d 490, 111 Cal. Rptr. 136, 516 P.2d 840 (1973).
S.D.—Americana Healthcare Center, a Div. of Manor Healthcare Corp. v. Randall, 513 N.W.2d 566 (S.D. 1994).

4 Cal.—Swoap v. Superior Court, 10 Cal. 3d 490, 111 Cal. Rptr. 136, 516 P.2d 840 (1973).
Or.—Kerr v. State Public Welfare Commission, 3 Or. App. 27, 470 P.2d 167 (1970).

5 U.S.—Fayle v. Stapley, 607 F.2d 858 (9th Cir. 1979).

6 Ill.—Kough v. Hoehler, 413 Ill. 409, 109 N.E.2d 177 (1952).

7 N.C.—State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

8 Ill.—Department of Mental Health v. Pauling, 47 Ill. 2d 269, 265 N.E.2d 159 (1970).

N.H.—In re Robb, 116 N.H. 134, 354 A.2d 408 (1976).

N.C.—State ex rel. Dorothea Dix Hosp. v. Davis, 292 N.C. 147, 232 S.E.2d 698 (1977).

9 Conn.—State v. Reed, 192 Conn. 520, 473 A.2d 775 (1984).

10 Cal.—In re Jerald C., 36 Cal. 3d 1, 201 Cal. Rptr. 342, 678 P.2d 917 (1984).

Fla.—Dupes v. State, Dept. of Health & Rehabilitative Services, 536 So. 2d 311 (Fla. 1st DCA 1988).

11 Wis.—Matter of K.C., 142 Wis. 2d 906, 420 N.W.2d 37 (1988).

12 Cal.—County of San Mateo v. Dell J., 46 Cal. 3d 1236, 252 Cal. Rptr. 478, 762 P.2d 1202 (1988).

13 Wash.—Griffin v. Department of Social and Health Services, 91 Wash. 2d 616, 590 P.2d 816 (1979).

14 Neb.—Boone County Old Age Assistance Bd. of Boone County v. Myhre, 149 Neb. 669, 32 N.W.2d 262 (1948).

15 Colo.—Wigington v. State Home and Training School, 175 Colo. 159, 486 P.2d 417 (1971).

16 Kan.—St. Francis Regional Medical Center, Inc. v. Bowles, 251 Kan. 334, 836 P.2d 1123 (1992).

17 Ga.—Sims v. Sims, 245 Ga. 680, 266 S.E.2d 493 (1980).

Even if only applies to heterosexual relationship

Ga.—Van Dyck v. Van Dyck, 262 Ga. 720, 425 S.E.2d 853 (1993).

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16C C.J.S. Constitutional Law § 1559

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1559. Liability for support or public care—Child support

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3194, 3738, 3748

A state may not discriminate against the right of a child born out of wedlock to seek support, but child support guidelines may be upheld under the rational basis test.

A state may not deny equal protection by denying the right to seek support on behalf of a child born out of wedlock when it provides a judicially enforceable right on behalf of other children.[1] An affirmative requirement that a putative father support his child, similar to that required of a married father, does not violate equal protection.[2] However, there is authority that if illegitimate children are treated the same as all who seek support under a child support statute, the fact that only children of divorced parents can seek education support after high school, pursuant to a marital dissolution statute, does not deprive the others of equal protection.[3] While a law requiring that a defendant in a paternity action pay temporary child support if blood tests indicate a sufficient likelihood of paternity does not discriminate against alleged fathers on the basis of gender,[4] denying support pendente lite does not deny equal protection to illegitimate children since, absent a final judgment of paternity, the relationship that creates the support obligation has not been determined.[5]

Child support statutes do not involve a suspect classification nor implicate fundamental rights for equal protection purposes;[6] thus, strict scrutiny does not apply in an equal protection challenge to a child support guideline.[7] Child support guidelines have been upheld even though they appear more protective of the children of the first marriage,[8] treat custodial and noncustodial parents differently,[9] or consider amounts paid to other children only pursuant to prior child support orders when determining a parent's ability to pay.[10]

The designation of the father as the parent obligated to pay child support to his former wife does not violate equal protection where the obligation is not based on gender but on their financial resources.[11]

An amendment lowering the age of majority does not deny equal protection to a divorced father bound by a support order entered prior to the amendment's effective date.[12] Requiring a parent to support a child until the child reaches 18, but extending this obligation until age 19 if the child is a full-time student in secondary school, is not arbitrary and unreasonable.[13] While it has generally been held that allowing a court to order a divorced parent to pay support for an adult child who is still in school, although a similar requirement is not imposed on married parents, does not violate equal protection,[14] other statutes granting courts this power were invalidated[15] on the basis that a state had no rational basis to compel only parents from families that are not intact to provide postsecondary educational support, absent an entitlement to that education or a generally applicable requirement that parents assist their adult children in obtaining it.[16]

The Uniform Reciprocal Enforcement of Support Act, which treats all fathers with dependent children living in another state alike, does not deny equal protection.[17] A statute that provides legal representation to a custodial parent seeking enforcement of child support obligations, but does not provide the same services to noncustodial parents, does not violate equal protection as it serves the rational purposes of improving child support collection and minimizing the need for public assistance.[18]

A statute requiring that a divorced parent post security for child support does not violate equal protection since divorced parents may be more likely not to support the child.[19] Similarly, equal protection is not violated by a statute providing that a noncustodial parent who has over $10,000 in child support arrearages is required to post bond for that amount as a prerequisite to a petition to modify child custody.[20]

Prohibiting a man from suing the natural father of his wife's children for reimbursement for necessaries, while permitting an unmarried woman to sue the natural father of her children, does not violate equal protection since the claim would not advance the paramount concern of providing for the welfare of the child.[21]

Driver's license suspension for nonpayment.

A statute permitting suspension of a child support obligor's driver's license for nonpayment of support when the obligor is not in compliance with a child support payment plan does not violate the equal protection rights of rural obligors even though the statute may have a disparate impact on rural obligors who are less able to access public transportation than urban obligors.[22]

CUMULATIVE SUPPLEMENT

Cases:

Divorced father could not recover on any equal protection challenge to statute governing credit against child support obligation for dependent benefits with respect to his request to be reimbursed for support he had paid during period when he was disabled;

statute was subject to determination of whether there was rational basis for differentiating obligors who were not in arrears and those who were, and father failed to meet burden of showing that statute was arbitrary and irrational, because, if he were entitled to credit for child support he paid during period also covered by dependent benefits, then mother would have been required to disgorge past payments, which undermined her ability to rely upon financial assurance provided by court order and exposed her to repaying amount she would not have known was in dispute, which was contrary to legislative policy underlying child support statute to provide for welfare of children. U.S. Const. Amend. 14; 19-A Me. Rev. Stat. § 2107. Teele v. West-Harper, 2017 ME 196, 170 A.3d 803 (Me. 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Gomez v. Perez, 409 U.S. 535, 93 S. Ct. 872, 35 L. Ed. 2d 56 (1973).
N.C.—Lenoir County ex rel. Cogdell v. Johnson, 46 N.C. App. 182, 264 S.E.2d 816, 16 A.L.R.4th 919 (1980).
N.D.—Matter of Kary, 376 N.W.2d 320 (N.D. 1985).
S.D.—State ex rel. Wieber v. Hennings, 311 N.W.2d 41 (S.D. 1981).
As to statutes of limitation that burden the child's rights, see § 1390.
As to the equal protection rights of children born out of wedlock, generally, see § 1585.
Additional support after lump-sum settlement
Wis.—Gerhardt v. Estate of Moore, 150 Wis. 2d 563, 441 N.W.2d 734 (1989).

2 Minn.—State on Behalf of Forslund v. Bronson, 305 N.W.2d 748 (Minn. 1981).

3 Iowa—Johnson v. Louis, 654 N.W.2d 886 (Iowa 2002).

4 Minn.—Machacek v. Voss, 361 N.W.2d 861 (Minn. 1985).

5 Mo.—Landoll by Landoll v. Dovell, 752 S.W.2d 323 (Mo. 1988).

6 S.D.—Birchfield v. Birchfield, 417 N.W.2d 891 (S.D. 1988).
Noncustodial parents versus custodial parents
Noncustodial parents versus custodial parents did not constitute a suspect class, and thus no suspect class triggered strict-scrutiny analysis of an equal protection challenge to the validity of a state's child support guidelines.
N.C.—Row v. Row, 185 N.C. App. 450, 650 S.E.2d 1 (2007).

7 Tenn.—Gallaher v. Elam, 104 S.W.3d 455 (Tenn. 2003).

8 Mo.—Leahy v. Leahy, 858 S.W.2d 221 (Mo. 1993).
S.D.—Feltman v. Feltman, 434 N.W.2d 590 (S.D. 1989).

9 Alaska—Lawson v. Lawson, 108 P.3d 883 (Alaska 2005).
Ga.—Georgia Dept. of Human Resources v. Sweat, 276 Ga. 627, 580 S.E.2d 206 (2003).
Iowa—In re Marriage of Rudish, 472 N.W.2d 276 (Iowa 1991).

10 Ark.—Stewart v. Winfrey, 308 Ark. 277, 824 S.W.2d 373 (1992).
Tenn.—Gallaher v. Elam, 104 S.W.3d 455 (Tenn. 2003).

11 N.H.—Wheaton-Dunberger v. Dunberger, 137 N.H. 504, 629 A.2d 812 (1993).

12 Ga.—Bell v. Bell, 237 Ga. 464, 228 S.E.2d 850 (1976).

13 S.D.—Birchfield v. Birchfield, 417 N.W.2d 891 (S.D. 1988).

14 Ark.—McFarland v. McFarland, 318 Ark. 446, 885 S.W.2d 897 (1994).
Ind.—Neudecker v. Neudecker, 577 N.E.2d 960 (Ind. 1991).
Iowa—In re Marriage of Vrban, 293 N.W.2d 198 (Iowa 1980).
Mo.—In re Marriage of Kohring, 999 S.W.2d 228 (Mo. 1999).
N.H.—LeClair v. LeClair, 137 N.H. 213, 624 A.2d 1350, 82 Ed. Law Rep. 1120 (1993).
Wash.—Childers v. Childers, 89 Wash. 2d 592, 575 P.2d 201 (1978).
Award of college expenses incident to child support
S.C.—McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012).

15 Fla.—Grapin v. Grapin, 450 So. 2d 853 (Fla. 1984).
Pa.—Curtis v. Kline, 542 Pa. 249, 666 A.2d 265 (1995).

16 Pa.—Curtis v. Kline, 542 Pa. 249, 666 A.2d 265 (1995).

17 Ga.—Dansby v. Dansby, 222 Ga. 118, 149 S.E.2d 252 (1966).
La.—Gambino v. Gambino, 396 So. 2d 434 (La. Ct. App. 4th Cir. 1981).
Show cause procedure under Act
Wash.—State ex rel. Burleigh v. Johnson, 31 Wash. App. 704, 644 P.2d 732 (Div. 1 1982).

18 D.C.—Clark v. Clark, 638 A.2d 667 (D.C. 1994).

19 Okla.—Abrego v. Abrego, 1991 OK 48, 812 P.2d 806 (Okla. 1991).

20 Mo.—Weigand v. Edwards, 296 S.W.3d 453 (Mo. 2009).

21 Ohio—Weinman v. Larsh, 5 Ohio St. 3d 85, 448 N.E.2d 1384 (1983).

22 Minn.—State ex rel. Com'r of Human Services v. Buchmann, 830 N.W.2d 895 (Minn. Ct. App. 2013).

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16C C.J.S. Constitutional Law § 1560

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1560. Liability for property damage

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3757

Changing the law governing liability for property damage does not violate the Equal Protection Clause.

A legislature may, without violating the Equal Protection Clause, impose different liability from that imposed by the common law for damage to property rights,[1] such as raising a presumption of fraud in certain transactions,[2] or imposing specific obligations on oil and gas developers to pay the surface owner for actual damages caused by drilling operations, even if developers of other minerals are not subject to those requirements.[3]

Vicarious liability may validly be imposed upon parents of public school students for damage to school property caused by their children,[4] and parents may be made liable for malicious or willful damage to property by their minor children.[5] Aircraft owners may be made absolutely liable for damage to property caused by the aircraft although other persons are liable only for the consequences of negligence.[6] The liability of a place of public accommodation for the loss of the property of a guest may be limited in particular circumstances without denying equal protection.[7]

A city's denial of a homeowner's claim for damages resulting from the destruction of the home by fire, allegedly due to the city's failure to provide fire protection, does not violate equal protection, absent evidence that similarly situated individuals were compensated by the city's claims fund.[8]

A snowmobile liability statute has been struck down as violative of equal protection, to extent that it provided that a snowmobile area operator is liable for death or injury to snowmobiler or other person or property only for an act or omission constituting gross negligence, on the ground that the gross negligence standard of care lacked a rational relationship to the purpose of the statute, which was to protect snowmobile area operators from frivolous lawsuits and liability over which they have no control, because the statute relieved snowmobile area operators from liability for their negligent or intentional conduct that was, by definition, within their control.[9]

Footnotes

1 **Excavator failing to support adjacent premises**
Mich.—Tillson v. Consumers' Power Co., 269 Mich. 53, 256 N.W. 801 (1934).

2 U.S.—James-Dickinson Farm Mortgage Co. v. Harry, 273 U.S. 119, 47 S. Ct. 308, 71 L. Ed. 569 (1927).

3 U.S.—Murphy v. Amoco Production Co., 729 F.2d 552 (8th Cir. 1984).

4 N.J.—Board of Ed. of Piscataway Tp. v. Caffiero, 86 N.J. 308, 431 A.2d 799 (1981).

5 Wyo.—Mahaney v. Hunter Enterprises, Inc., 426 P.2d 442 (Wyo. 1967).
As to parental liability for personal injuries, see § 1565.

6 S.C.—Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977).

7 Cal.—Pacific Diamond Co. v. Superior Court, 85 Cal. App. 3d 871, 149 Cal. Rptr. 813 (1st Dist. 1978) (analyzing Colorado statute).

8 Miss.—Westbrook v. City of Jackson, 828 So. 2d 196 (Miss. 2002).

9 Mont.—Oberson v. U.S. Dept. of Agriculture, Forest Service, 2007 MT 293, 339 Mont. 519, 171 P.3d 715 (2007).

16C C.J.S. Constitutional Law § 1561

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1561. Creation, displacement, or foreclosure of liens

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3749

The creation or displacement of a lien does not violate the Equal Protection Clause if it does not effect an unreasonable classification, and laws governing foreclosures and redemptions must have a rational basis.

If state action does not effect an unreasonable classification or discrimination, a constitutional or statutory provision creating a lien, either expressly or impliedly, does not violate the Equal Protection Clause.[1] This rule applies to mechanics' liens,[2] including laws that place mechanics' liens on mines in a class by themselves;[3] however, a rational basis did not exist for a provision exempting licensed contractors performing commercial and industrial construction from giving notice to property owners of potential materialman's lien claimants.[4] Equal protection is also not violated by a statute that displaces prior liens, unless recorded, in favor of bona fide purchasers and encumbrancers.[5] A statute providing for the recordation of liens on the certificate of title of a motor vehicle is valid although it makes no provision for the recordation of a judgment lien.[6]

Statutes providing a method of service in proceedings to confirm nonjudicial foreclosure sales, differing from the usual civil practice act requirements, do not violate equal protection where the debtor is merely a party to a special statutory proceeding in

which the court's supervisory authority is invoked rather than a civil action.[7] A statute that permits a mortgagor to reinstate a delinquent mortgage upon certain conditions, while limiting the frequency of its use, satisfies equal protection requirements.[8] A redemption statute, which provides a debtor with a right of redemption at the time of a foreclosure sale, provided that the debtor has not delayed the sale by securing a stay of execution of the foreclosure judgment, does not violate equal protection.[9] Special requirements regarding the waiver of homestead exemption with regard to agricultural land have been upheld;[10] however, a statutory amendment that extended the redemption period solely for those mortgagors whose agricultural homesteads have not been purchased at a sheriff's sale by certain insured financial institutions violated equal protection since discrimination with regard to the redemption period based solely on the identity of the purchaser bears no rational relationship to the public purpose of providing relief to farmers in financial distress.[11]

Footnotes

1 Alaska—Suber v. Alaska State Bond Committee, 414 P.2d 546 (Alaska 1966).
Ga.—Alco Feed Mills v. Hollis, 184 Ga. 594, 192 S.E. 184 (1937).
Idaho—Sanderson v. Salmon River Canal Co., 45 Idaho 244, 263 P. 32 (1927).
Or.—State ex rel. Veatch v. Franklin, 163 Or. 500, 98 P.2d 724 (1940).

2 Ark.—Paragould Paint & Glass, Inc. v. Rodgers, 269 Ark. 191, 599 S.W.2d 709 (1980).
N.D.—Federal Farm Mortg. Corp. v. Falk, 67 N.D. 154, 270 N.W. 885, 113 A.L.R. 724 (1936), subsequent determination, 67 N.D. 341, 272 N.W. 286, 113 A.L.R. 737 (1937).
Against corporations and partnerships only
Tenn.—Willis v. Mann Const. Co., 145 Tenn. 318, 236 S.W. 282 (1921).
W. Va.—Raleigh County Const. Co. v. Amere Gas Utilities Co., 110 W. Va. 291, 158 S.E. 161 (1931).

3 Minn.—Olson v. Oneida Mines Co., 153 Minn. 80, 189 N.W. 455 (1922).

4 Ark.—Urrey Ceramic Tile Co., Inc. v. Mosley, 304 Ark. 711, 805 S.W.2d 54 (1991).

5 W. Va.—Bent v. Weaver, 108 W. Va. 299, 150 S.E. 738 (1929).

6 Fla.—Johnson v. Livingston, 65 So. 2d 744 (Fla. 1953).

7 Ga.—Vlass v. Security Pacific Nat. Bank, 263 Ga. 296, 430 S.E.2d 732 (1993).

8 Ill.—First Federal Sav. and Loan Ass'n of Chicago v. Walker, 91 Ill. 2d 218, 62 Ill. Dec. 956, 437 N.E.2d 644 (1982).

9 Iowa—Hawkeye Bank & Trust N.A., of Centerville-Seymour v. Milburn, 437 N.W.2d 919 (Iowa 1989).

10 Iowa—West Des Moines State Bank v. Mills, 482 N.W.2d 432 (Iowa 1992).

11 Iowa—Federal Land Bank of Omaha v. Arnold, 426 N.W.2d 153 (Iowa 1988).

16C C.J.S. Constitutional Law § 1562

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1562. Liability for failure to pay debt or claim

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3686, 3694, 3745, 3746, 3760, 3761

As a general rule, statutes imposing an additional liability on carriers, railroad companies, and insurance companies for failing to pay a debt or claim within a specified time do not violate equal protection.

Statutes that impose on common carriers,[1] railroad companies operating within a state,[2] or insurance companies[3] an additional liability, either by way of damages,[4] a penalty,[5] or costs[6] for failure to pay a debt or a claim for damages within a specified reasonable time, do not violate equal protection. The classification of insurance companies as the only defendants subject to bad-faith actions does not violate their equal protection rights since the insurance industry has been historically treated as one affected with a public interest, insurers may not be allowed to refuse or fail to pay valid claims purely for perceived economic reasons, and the policyholders are in an inferior bargaining position.[7] However, a statute imposing additional liability against an insurance company for failure to pay violates the Equal Protection Clause, unless it is construed as imposing a penalty for a vexatious refusal to pay and to permit the insurer to litigate the matter without penalty, if the question of liability is subject to reasonable dispute.[8]

Footnotes

1 U.S.—Chicago & N.W. Ry. Co. v. Nye-Schneider-Fowler Co., 260 U.S. 35, 43 S. Ct. 55, 67 L. Ed. 115 (1922).

2 U.S.—Kansas City Southern Ry. Co. v. Anderson, 233 U.S. 325, 34 S. Ct. 599, 58 L. Ed. 983 (1914).

3 U.S.—Life & Cas. Ins. Co. of Tenn. v. McCray, 291 U.S. 566, 54 S. Ct. 482, 78 L. Ed. 987 (1934).

4 U.S.—Kansas City Southern Ry. Co. v. Anderson, 233 U.S. 325, 34 S. Ct. 599, 58 L. Ed. 983 (1914).
As to punitive damages for failure to pay, see § 1564.
For refusal to pay policy
U.S.—Life & Cas. Ins. Co. of Tenn. v. McCray, 291 U.S. 566, 54 S. Ct. 482, 78 L. Ed. 987 (1934).

5 U.S.—Yazoo & M.V.R. Co. v. Jackson Vinegar Co., 226 U.S. 217, 33 S. Ct. 40, 57 L. Ed. 193 (1912).
As to liability for a penalty, generally, see § 1563.

6 U.S.—Kansas City Southern Ry. Co. v. Anderson, 233 U.S. 325, 34 S. Ct. 599, 58 L. Ed. 983 (1914).

7 Ala.—United American Ins. Co. v. Brumley, 542 So. 2d 1231 (Ala. 1989).

8 Ark.—Missouri State Life Ins. Co. v. Fodrea, 185 Ark. 155, 46 S.W.2d 638 (1932).

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16C C.J.S. Constitutional Law § 1563

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1563. Liability for penalty or forfeiture

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3758

Equal protection is not violated by the imposition of a penalty or forfeiture unless the statute makes an unreasonable discrimination or imposes an excessive and unreasonable penalty.

A statute that prescribes a penalty[1] or forfeiture[2] does not violate equal protection unless it makes an arbitrary and unreasonable discrimination.[3] Statutes have been held constitutional, within this rule, that impose a penalty on railroad companies for a failure to perform a legal duty.[4] A motor vehicle may be forfeited, consistent with equal protection, if it was used for criminal activities[5] or operated by a person whose license has been revoked,[6] or may be impounded if the driver is convicted of driving under the influence, unless the court finds that the owner's family has no other means of transportation.[7] An innocent spouse exemption in a forfeiture statute does not violate equal protection despite a contention that the exemption did not extend to property jointly owned with someone other than a spouse.[8]

The distribution, pursuant to statute, of the proceeds of a fund into which penalties have been deposited violates equal protection where the statutory classifications are unreasonable.[9]

Excessive or unreasonable penalties.

The imposition of an unreasonable penalty constitutes a denial of equal protection.[10] A statute that subjects persons or corporations to such excessive or unreasonable penalties for its violation as to deter them from contesting the validity of the statute in court is void as a denial of equal protection.[11] The states, however, possess a large measure of discretion in fixing the amount of penalties, and penalty statutes will not be declared void where the amounts are not clearly excessive and unreasonable;[12] nor may a statute be declared void where the penalties do not attach until after there has been a full opportunity to test the statute's validity in court.[13]

Footnotes

1 U.S.—P.F. Petersen Baking Co. v. Bryan, 290 U.S. 570, 54 S. Ct. 277, 78 L. Ed. 505, 90 A.L.R. 1285 (1934).

2 Ky.—Muscovalley v. Horn, 246 Ky. 778, 56 S.W.2d 354 (1932).
Mass.—Commonwealth v. Novak, 272 Mass. 113, 172 N.E. 84 (1930).
Money found near contraband
Md.—Gatewood v. State, 268 Md. 349, 301 A.2d 498 (1973).

3 Va.—C.I.T. Corp. v. Commonwealth, 153 Va. 57, 149 S.E. 523 (1929).
Wis.—Stierle v. Rohmeyer, 218 Wis. 149, 260 N.W. 647 (1935).
Additional surcharge for crime victim compensation
A statute that imposed a 5% surcharge not only on criminal offenders but also on those who pay civil fines violated equal protection as a direct civil charge levied solely to compensate crime victims does not satisfy the reasonable relationship test.
Fla.—State v. Champe, 373 So. 2d 874 (Fla. 1978).

4 U.S.—Missouri, K. & T. Ry. Co. of Texas v. May, 194 U.S. 267, 24 S. Ct. 638, 48 L. Ed. 971 (1904).
Failure to maintain cattle guards at crossings
Iowa—Burchette v. Chicago, R.I. & P.R. Co., 234 N.W.2d 149 (Iowa 1975).

5 Ala.—Mosley v. State, 255 Ala. 130, 50 So. 2d 433 (1951).
Ill.—People ex rel. Hanrahan v. 1970 Pontiac Serial No. 276570A104608, 14 Ill. App. 3d 820, 303 N.E.2d 547 (1st Dist. 1973).

6 Va.—Com. v. One 1970, 2 Dr. H. T. Lincoln Auto., Identification No. OY89A826833, 212 Va. 597, 186 S.E.2d 279 (1972).

7 Fla.—State v. Muller, 693 So. 2d 976 (Fla. 1997).

8 Fla.—In re Forfeiture of 1985 Ford Ranger Pickup Truck, 598 So. 2d 1070 (Fla. 1992).

9 **Distribution of fund to good drivers**
Fla.—State v. Lee, 356 So. 2d 276 (Fla. 1978).

10 Ind.—Superior Laundry Co. v. Rose, 193 Ind. 138, 137 N.E. 761, 26 A.L.R. 1392 (1923).

11 U.S.—Chicago & N.W. Ry. Co. v. Nye-Schneider-Fowler Co., 260 U.S. 35, 43 S. Ct. 55, 67 L. Ed. 115 (1922).

12 U.S.—Chicago & N.W. Ry. Co. v. Nye-Schneider-Fowler Co., 260 U.S. 35, 43 S. Ct. 55, 67 L. Ed. 115 (1922).
Cal.—People v. Western Air Lines, 42 Cal. 2d 621, 268 P.2d 723 (1954).

13 U.S.—Wadley Southern Ry. Co. v. State of Georgia, 235 U.S. 651, 35 S. Ct. 214, 59 L. Ed. 405 (1915).

16C C.J.S. Constitutional Law § 1564

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

1. Overview

§ 1564. Liability for punitive damages

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3759

Statutes authorizing, limiting, or prescribing the distribution of punitive damages have generally been upheld in the face of equal protection challenges.

If it operates uniformly, a provision that authorizes the recovery of exemplary, punitive, or multiple damages for certain wrongs has been upheld.[1] A statute limiting punitive damages may be applied retrospectively without violating equal protection since a plaintiff does not have a vested right to recover them before judgment.[2] The exception of wrongful death actions from statutes restricting punitive damages does not violate equal protection where this exception bears a rational relationship to a legitimate state interest in protecting lives.[3]

Statutes that allocate to the state half of a punitive damage judgment, but allowing the plaintiff to retain an entire settlement, including punitive damages, do not violate equal protection as they may be based on a legislative purpose of encouraging settlements or on a determination that it would be easier to collect a portion of a final judgment.[4] A statute providing that a portion of the punitive damages awarded in a product liability action must be paid into the state treasury did not violate equal protection, even though punitive damages recovered in other tort cases were not subject to this requirement, since the purposes

of the statute were to assure that the defendant is deterred, but because of the potential that a widespread product defect could result in numerous citizens being injured, there is no compelling reason to let the first litigant retain the punitive damages, and so they should be awarded to the State for the benefit of its citizens.[5]

An exemption from a statutory cap on punitive damages in actions under a state merchandising practices act which applies when the defendant has been convicted of a felony arising out of the acts or omissions pled by the plaintiff does not violate equal protection.[6]

Footnotes

1 Mo.—Alexander v. Chicago, M. & St. P.R. Co., 282 Mo. 236, 221 S.W. 712, 11 A.L.R. 867 (1920).
Punitive damages for insurer's failure to pay claims promptly
Ga.—Atlanta Cas. Co. v. Jones, 247 Ga. 238, 275 S.E.2d 328 (1981).
As to penalties for failure to pay, see § 1562.
Safety violation by utility
A public utilities statute providing for an award of treble damages for injuries resulting from a public safety violation was not violative of equal protection as applied to a gas company, in view of the highly dangerous nature of natural gas; the provision provided incentives to comply with applicable regulations and to deter dangerous violations.
Wis.—Peissig v. Wisconsin Gas Co., 155 Wis. 2d 686, 456 N.W.2d 348 (1990).

2 Iowa—Shepherd Components, Inc. v. Brice Petrides-Donohue & Associates, Inc., 473 N.W.2d 612 (Iowa 1991).

3 Ala.—Alabama Power Co. v. Turner, 575 So. 2d 551 (Ala. 1991).

4 Alaska—Anderson v. State ex rel. Central Bering Sea Fishermen's Ass'n, 78 P.3d 710 (Alaska 2003).
Mo.—Fust v. Attorney General for the State of Mo., 947 S.W.2d 424 (Mo. 1997).

5 Ga.—Mack Trucks, Inc. v. Conkle, 263 Ga. 539, 436 S.E.2d 635 (1993).

6 Mo.—Estate of Overbey v. Chad Franklin National Auto Sales North, LLC, 361 S.W.3d 364 (Mo. 2012).

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XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

a. In General

§ 1565. Validity under equal protection laws of legislation or policies pertaining to liability for personal injuries, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3751

Nondiscriminatory legislation or governmental policies relating to liability for personal injuries do not violate equal protection.

A state may, without violating equal protection, enact nondiscriminatory legislation, or carry out governmental policies, relating to liability for personal injuries.[1] Accordingly, the courts have generally upheld dram shop and social host acts,[2] crime victims compensation acts,[3] the common-law doctrine of interspousal tort immunity,[4] the firefighter's rule,[5] a statute abolishing alienation of affection and similar actions,[6] comparative negligence statutes of general application,[7] laws affecting the collateral source rule,[8] caps on noneconomic damages,[9] the application of the market-share theory of liability,[10] a statute requiring that one be born alive to recover for a prenatal injury,[11] a blood shield statute,[12] and the imposition of parental liability for their children's acts.[13]

A statute may, consistent with equal protection, allow a defendant to show the negligence of a plaintiff under a specified age in defense of a tort suit while denying a plaintiff the right to show the negligence of a defendant under that age[14] or provide a defense to a person who is licensed to furnish ambulance service and who, in good faith, renders emergency care.[15] A statute changing the rules with respect to joint and several liability may have a rational basis[16] even though it does not cover all torts, such as where medical malpractice was excluded because the legislature had recently passed other major medical malpractice reform laws.[17]

While the right to recover for personal injuries is an important substantive right, for equal protection purposes, sometimes requiring intermediate scrutiny[18] under a state constitution, of statutes affecting it,[19] elsewhere, such a statute need only meet the rational relationship test.[20]

Footnotes

1 Ariz.—McGeorge v. City of Phoenix, 117 Ariz. 272, 572 P.2d 100 (Ct. App. Div. 1 1977).
Cal.—Durham v. City of Los Angeles, 91 Cal. App. 3d 567, 154 Cal. Rptr. 243 (2d Dist. 1979).
N.J.—Blair v. Erie Lackawanna Ry. Co., 124 N.J. Super. 162, 305 A.2d 446 (Law Div. 1973).
Wis.—Goodson v. City of Racine, 61 Wis. 2d 554, 213 N.W.2d 16 (1973).

2 Alaska—Chokwak v. Worley, 912 P.2d 1248 (Alaska 1996).
Colo.—Sigman By and Through Sigman v. Seafood Ltd. Partnership I, 817 P.2d 527 (Colo. 1991).
Idaho—Coghlan v. Beta Theta Pi Fraternity, 133 Idaho 388, 987 P.2d 300, 139 Ed. Law Rep. 643 (1999).
Iowa—Grovijohn v. Virjon, Inc., 643 N.W.2d 200 (Iowa 2002).
Me.—Swan v. Sohio Oil Co., 618 A.2d 214 (Me. 1992).
Mo.—Snodgras v. Martin & Bayley, Inc., 204 S.W.3d 638 (Mo. 2006).
Mont.—Rohlfs v. Klemenhagen, LLC, 2009 MT 440, 354 Mont. 133, 227 P.3d 42 (2009).
Ohio—Studer v. Veterans of Foreign Wars Post 3767, 185 Ohio App. 3d 691, 2009-Ohio-7002, 925 N.E.2d 629 (11th Dist. Trumbull County 2009).
Distinction based on liquor illegally furnished
Wyo.—Greenwalt v. Ram Restaurant Corp. of Wyoming, 2003 WY 77, 71 P.3d 717 (Wyo. 2003).
Serving underage drinkers
Wis.—Doering v. WEA Ins. Group, 193 Wis. 2d 118, 532 N.W.2d 432 (1995).
Damage cap invalid
Legislation imposing a damage cap on civil damage act recoveries against liquor vendors to limit damages from claims brought against liquor stores, while not imposing such a cap on damages awarded against a 3.2 beer vendor, did not have a rational basis since the classification was not relevant to the law's purpose to increase the availability of liability insurance to protect the public.
Minn.—McGuire v. C & L Restaurant Inc., 346 N.W.2d 605 (Minn. 1984).

3 Wash.—Haddenham v. State, 87 Wash. 2d 145, 550 P.2d 9 (1976).
Residency requirement
Cal.—Ostrager v. State Board of Control, 99 Cal. App. 3d 1, 160 Cal. Rptr. 317 (1st Dist. 1979).

4 Ga.—Harris v. Harris, 252 Ga. 387, 313 S.E.2d 88 (1984).

5 Cal.—Farmer v. Union Oil Co., 75 Cal. App. 3d 42, 141 Cal. Rptr. 848 (5th Dist. 1977).
Iowa—Chapman v. Craig, 431 N.W.2d 770 (Iowa 1988).
Md.—Flowers v. Sting Sec., Inc., 62 Md. App. 116, 488 A.2d 523 (1985), judgment aff'd, 308 Md. 432, 520 A.2d 361 (1987).

6 Ohio—Strock v. Pressnell, 38 Ohio St. 3d 207, 527 N.E.2d 1235, 75 A.L.R.4th 729 (1988).

7 Colo.—Harris v. The Ark, 810 P.2d 226 (Colo. 1991).
N.D.—Mauch v. Manufacturers Sales & Service, Inc., 345 N.W.2d 338 (N.D. 1984).
S.C.—Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978).

8 Ohio—Buchman v. Wayne Trace Local School Dist. Bd. of Edn., 73 Ohio St. 3d 260, 1995-Ohio-136, 652 N.E.2d 952, 101 Ed. Law Rep. 1089 (1995).
As to laws applicable to medical practice claims, see § 1568.

9 Md.—Oaks v. Connors, 339 Md. 24, 660 A.2d 423 (1995).
As to laws applicable to medical practice claims, see § 1568.

10 Fla.—Conley v. Boyle Drug Co., 570 So. 2d 275 (Fla. 1990).

11 Ga.—Peters v. Hospital Authority of Elbert County, 265 Ga. 487, 458 S.E.2d 628 (1995).

12 S.C.—Samson v. Greenville Hosp. System, 295 S.C. 359, 368 S.E.2d 665, 5 U.C.C. Rep. Serv. 2d 1274 (1988).

13 Neb.—Distinctive Printing and Packaging Co. v. Cox, 232 Neb. 846, 443 N.W.2d 566 (1989).
Despite absence of custody and control
N.M.—Alber v. Nolle, 98 N.M. 100, 1982-NMCA-085, 645 P.2d 456 (Ct. App. 1982).
As to parental liability for property damage, see § 1560.

14 Ga.—Barrett v. Carter, 248 Ga. 389, 283 S.E.2d 609 (1981).

15 Ga.—Anderson v. Little & Davenport Funeral Home, Inc., 242 Ga. 751, 251 S.E.2d 250 (1978).

16 Cal.—Evangelatos v. Superior Court, 44 Cal. 3d 1188, 246 Cal. Rptr. 629, 753 P.2d 585 (1988).
Ill.—Unzicker v. Kraft Food Ingredients Corp., 203 Ill. 2d 64, 270 Ill. Dec. 724, 783 N.E.2d 1024 (2002).
N.D.—Kavadas v. Lorenzen, 448 N.W.2d 219 (N.D. 1989).
Limited to future trials
Iowa—Beeler v. Van Cannon, 376 N.W.2d 628 (Iowa 1985).

17 Ill.—Unzicker v. Kraft Food Ingredients Corp., 203 Ill. 2d 64, 270 Ill. Dec. 724, 783 N.E.2d 1024 (2002).

18 § 1278.

19 N.H.—Lorette v. Peter-Sam Inv. Properties, 140 N.H. 208, 665 A.2d 341 (1995).
N.D.—Bouchard v. Johnson, 555 N.W.2d 81 (N.D. 1996).

20 Colo.—Gallegos v. Phipps, 779 P.2d 856 (Colo. 1989).

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XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

a. In General

§ 1566. Settlements and contribution

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3751

Statutes, including the Uniform Contribution Among Joint Tortfeasors Act, dealing with the effect of settlements, including on contribution rights, have generally been upheld when challenged on equal protection grounds.

The portion of the Uniform Contribution Among Joint Tortfeasors Act that requires pro rata contribution without consideration of relative fault does not violate equal protection.[1] Another provision of such a statute, which discharges a tortfeasor from liability for contribution to any other tortfeasor when a release or covenant not to sue is given, in good faith, to another person liable for the same injury, has been upheld notwithstanding the replacement of the doctrine of contributory negligence with a pure form of comparative negligence.[2] A statute requiring common liability for contribution did not violate equal protection, where it precluded an insurer of one tortfeasor from recovering contribution from an alleged joint tortfeasor, due to the fact that the injured claimant's only remedy against the joint tortfeasor was a workers' compensation claim, and therefore, a common liability to the claimant was lacking.[3]

A statute that renders voidable a settlement of a cause of action for personal injuries made while the person injured is under disability from the effect of the injury, or if made within a specified number of days after the date of the injury, is valid.[4]

Footnotes

1 Mass.—Zeller v. Cantu, 395 Mass. 76, 478 N.E.2d 930 (1985).

2 Mich.—West v. Rollhaven Skating Arena, 105 Mich. App. 100, 306 N.W.2d 408 (1981).

3 Iowa—Allied Mut. Ins. Co. v. State, 473 N.W.2d 24 (Iowa 1991).

4 N.D.—Peterson v. Panovitz, 62 N.D. 328, 243 N.W. 798, 84 A.L.R. 1290 (1932).

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XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

a. In General

§ 1567. Loss of consortium

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3753

Statutes prescribing who has the right to recover for loss of consortium have generally been upheld.

A statute does not violate equal protection by allowing a spouse to maintain an action for loss of marital consortium while denying recovery by a child or parent for loss of society.[1] A statutory requirement that a parent be financially dependent on an adult child to be able to recover damages for loss of that child's consortium satisfies the rational basis test.[2]

Footnotes

1 Ill.—Mueller v. Hellrung Const. Co., 107 Ill. App. 3d 337, 63 Ill. Dec. 140, 437 N.E.2d 789 (5th Dist. 1982).
Minn.—Salin v. Kloempken, 322 N.W.2d 736 (Minn. 1982).
Mo.—Powell v. American Motors Corp., 834 S.W.2d 184 (Mo. 1992).
N.J.—Russell v. Salem Transp. Co., Inc., 61 N.J. 502, 295 A.2d 862, 69 A.L.R.3d 522 (1972).

N.D.—Hastings v. James River Aerie No. 2337-Fraternal Order of Eagles, 246 N.W.2d 747 (N.D. 1976).

2 Wash.—Philippides v. Bernard, 151 Wash. 2d 376, 88 P.3d 939 (2004), as amended, (May 4, 2004).

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XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

b. Particular Causes of Action or Situations

§ 1568. Medical malpractice

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3754

Statutes regulating liability for medical malpractice have generally been upheld under the rational basis test.

Statutes governing health care liability are usually subject to rational basis review[1] unless, under a state constitution, the right to pursue a medical malpractice action is a fundamental right.[2] The courts have upheld, as against a contention of a violation of equal protection, statutory provisions relating to liability for medical malpractice, including those barring medical malpractice suits upon a guarantee, warranty, or assurance not in writing and signed by the health care provider;[3] exempting a group health or health services organization from actions based on the negligence of persons rendering professional services on its behalf to subscribers;[4] prohibiting a demand for a specific amount of damages;[5] requiring that a medical expert testify as to the standard of care;[6] modifying the rules concerning vicarious liability;[7] affecting the apportionment of fault;[8] requiring the periodic payment of future damages under some conditions;[9] and prohibiting punitive damage awards.[10]

Prerequisites.

A state may, without denying equal protection, require a medical malpractice plaintiff to give defendant advance notice before filing a medical malpractice action,[11] require a doctor's preliminary report of merit[12] or a certificate of good faith,[13] or establish a medical malpractice review panel procedure.[14] The equal protection rights of a social worker are not violated by not being included as a health care professional in a medical tribunal statute even though psychologists were included.[15]

It is not a denial of equal protection to require that plaintiffs participate in mediation prior to bringing a suit[16] even where defendants have the option of not participating in mediation.[17]

Collateral source rule; subrogation.

Statutes have generally been upheld that reduce the amount of recovery in a medical malpractice action by amounts received from collateral sources,[18] but it has also been held that the abrogation of the collateral source rule in medical malpractice cases violated a state equal protection clause.[19] Statutes that prescribed different deductions for collateral source payments in medical and nonmedical malpractice cases violated the Equal Protection Clause since the different treatment of particular types of tort victims was not necessary to promote the goal of limiting double recoveries, especially absent clear evidence of an insurance crisis to which the statutory classifications were intended to respond.[20]

The equal protection rights of a tortfeasor's automobile insurer are not violated by application of a medical malpractice statute to bar the insurer's subrogation claim against a patient's medical service provider, seeking to recover costs for allegedly unnecessary surgery, since a rational basis exists for excluding the insurer from the class of parties allowed to pursue derivative medical malpractice claims, as such limitation helps to reduce the costs associated with medical malpractice litigation.[21]

Wrongful birth.

Statutes prohibiting wrongful birth suits do not violate equal protection.[22] A refusal to recognize a wrongful birth claim does not violate the parents' equal protection rights even though the court had previously recognized a "wrongful pregnancy" claim, the distinction being based on whether the parents wanted to abort an impaired fetus rather than never wanted to have a child.[23]

Footnotes

1 U.S.—Csiszer v. Wren, 614 F.3d 866 (8th Cir. 2010).
Ariz.—Baker v. University Physicians Healthcare, 231 Ariz. 379, 296 P.3d 42 (2013).
Haw.—Dubin v. Wakuzawa, 89 Haw. 188, 970 P.2d 496 (1998), as amended on reconsideration in part, (Jan. 12, 1999).
Ill.—Bernier v. Burris, 113 Ill. 2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986).
Me.—Irish v. Gimbel, 1997 ME 50, 691 A.2d 664 (Me. 1997).
Mich.—Westfall v. McCririe, 2006 WL 827955 (Mich. Ct. App. 2006).
Tex.—Rose v. Doctors Hosp., 801 S.W.2d 841 (Tex. 1990).
Va.—King v. Virginia Birth-Related Neurological Injury Compensation Program, 242 Va. 404, 410 S.E.2d 656 (1991).
Wis.—Czapinski v. St. Francis Hosp., Inc., 2000 WI 80, 236 Wis. 2d 316, 613 N.W.2d 120 (2000).
As to statutes of limitation or repose applicable to medical malpractice actions, see § 1392.

2 Ariz.—Kenyon v. Hammer, 142 Ariz. 69, 688 P.2d 961 (1984).

3 N.C.—Preston v. Thompson, 53 N.C. App. 290, 280 S.E.2d 780, 31 U.C.C. Rep. Serv. 1592 (1981).

4 Mo.—Harrell v. Total Health Care, Inc., 781 S.W.2d 58 (Mo. 1989) (holding modified on other grounds by, Kilmer v. Mun, 17 S.W.3d 545 (Mo. 2000)).

R.I.—Soares v. RIGHA Group, Inc., 581 A.2d 1030 (R.I. 1990).

5 La.—Everett v. Goldman, 359 So. 2d 1256 (La. 1978).

6 Ark.—Eady v. Lansford, 351 Ark. 249, 92 S.W.3d 57 (2002).

7 Kan.—Lemuz By and Through Lemuz v. Fieser, 261 Kan. 936, 933 P.2d 134 (1997).

8 Mo.—Adams By and Through Adams v. Children's Mercy Hosp., 832 S.W.2d 898 (Mo. 1992) (overruled on other grounds by, Watts v. Lester E. Cox Medical Centers, 376 S.W.3d 633 (Mo. 2012)).

9 Colo.—Garhart ex rel. Tinsman v. Columbia/Healthone, L.L.C., 95 P.3d 571 (Colo. 2004), as modified on denial of reh'g, (Aug. 16, 2004) and as modified, (Sept. 1, 2004).

Ill.—Bernier v. Burris, 113 Ill. 2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986).

Mo.—Adams By and Through Adams v. Children's Mercy Hosp., 832 S.W.2d 898 (Mo. 1992) (overruled on other grounds by, Watts v. Lester E. Cox Medical Centers, 376 S.W.3d 633 (Mo. 2012)).

Wis.—State ex rel. Strykowski v. Wilkie, 81 Wis. 2d 491, 261 N.W.2d 434 (1978).

10 Ill.—Bernier v. Burris, 113 Ill. 2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986).

11 **Notice required 90 days in advance**

Wash.—McDevitt v. Harbor View Medical Center, 179 Wash. 2d 59, 316 P.3d 469 (2013).

Notice required 182 days in advance

Mich.—Westfall v. McCririe, 2006 WL 827955 (Mich. Ct. App. 2006).

12 Ill.—DeLuna v. St. Elizabeth's Hosp., 147 Ill. 2d 57, 167 Ill. Dec. 1009, 588 N.E.2d 1139 (1992).

Malpractice merit affidavit required as part of complaint

Ohio—Oglesby v. Consol. Rail Corp., 2009-Ohio-1744, 2009 WL 1143121 (Ohio Ct. App. 6th Dist. Erie County 2009).

13 Tenn.—Jackson v. HCA Health Services of Tennessee, Inc., 383 S.W.3d 497 (Tenn. Ct. App. 2012).

14 Alaska—Keyes v. Humana Hosp. Alaska, Inc., 750 P.2d 343 (Alaska 1988).

Del.—Lacy v. Green, 428 A.2d 1171 (Del. Super. Ct. 1981).

La.—Everett v. Goldman, 359 So. 2d 1256 (La. 1978).

Me.—Irish v. Gimbel, 1997 ME 50, 691 A.2d 664 (Me. 1997).

Mass.—Paro v. Longwood Hospital, 373 Mass. 645, 369 N.E.2d 985 (1977).

Mont.—Linder v. Smith, 193 Mont. 20, 629 P.2d 1187 (1981).

Nev.—Barrett v. Baird, 111 Nev. 1496, 908 P.2d 689 (1995) (overruled on other grounds by, Lioce v. Cohen, 122 Nev. 1377, 149 P.3d 916 (2006)) and (overruled on other grounds by, Lioce v. Cohen, 124 Nev. 1, 174 P.3d 970 (2008)).

Ohio—Beatty v. Akron City Hospital, 67 Ohio St. 2d 483, 21 Ohio Op. 3d 302, 424 N.E.2d 586 (1981).

Wis.—State ex rel. Strykowski v. Wilkie, 81 Wis. 2d 491, 261 N.W.2d 434 (1978).

15 Mass.—Carter v. Bowie, 432 Mass. 563, 736 N.E.2d 385 (2000).

16 Haw.—Dubin v. Wakuzawa, 89 Haw. 188, 970 P.2d 496 (1998), as amended on reconsideration in part, (Jan. 12, 1999).

17 Fla.—McCarthy v. Mensch, 412 So. 2d 343 (Fla. 1982).

18 Ala.—Marsh v. Green, 782 So. 2d 223 (Ala. 2000).

Alaska—Reid v. Williams, 964 P.2d 453 (Alaska 1998).

Fla.—Pinillos v. Cedars of Lebanon Hospital Corp., 403 So. 2d 365 (Fla. 1981).

Ill.—Bernier v. Burris, 113 Ill. 2d 219, 100 Ill. Dec. 585, 497 N.E.2d 763 (1986).

Iowa—Rudolph v. Iowa Methodist Medical Center, 293 N.W.2d 550 (Iowa 1980).

Ohio—Morris v. Savoy, 61 Ohio St. 3d 684, 576 N.E.2d 765 (1991).

19 Kan.—Farley v. Engelken, 241 Kan. 663, 740 P.2d 1058, 74 A.L.R.4th 1 (1987).

20 Ohio—Sorrell v. Thevenir, 69 Ohio St. 3d 415, 1994-Ohio-38, 633 N.E.2d 504 (1994), overturned due to legislative action in 2002 Ohio Laws File 250.

21 Wis.—Konkel v. Acuity, 2009 WI App 132, 321 Wis. 2d 306, 775 N.W.2d 258 (Ct. App. 2009).

22 Minn.—Hickman v. Group Health Plan, Inc., 396 N.W.2d 10 (Minn. 1986).

Utah—Wood v. University of Utah Medical Center, 2002 UT 134, 67 P.3d 436 (Utah 2002).

23 Ga.—Etkind v. Suarez, 271 Ga. 352, 519 S.E.2d 210 (1999).

As to wrongful pregnancy, wrongful birth, and similar causes of action, see C.J.S., Physicians, Surgeons, and Other Health-care Providers §§ 127 to 130.

End of Document

16C C.J.S. Constitutional Law § 1569

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

b. Particular Causes of Action or Situations

§ 1569. Medical malpractice—Damage caps

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3754

Damage caps in malpractice cases have generally been upheld, but there is some authority that they violate equal protection.

Damage caps in malpractice cases have often been upheld,[1] based on the rational basis test,[2] even where imposed on economic damages[3] or not subject to an inflation adjustment applicable to caps on other types of tort claims.[4] However, it has also been said that since caps have the harshest impact on the most severely injured victims, they must be given careful scrutiny,[5] and a total global cap on the recovery of all noneconomic damages arising out of an occurrence of medical malpractice has been held unconstitutional under principles of equal protection.[6] In addition, a statutory cap on wrongful death noneconomic damages provided by a medical malpractice has been said to impose unfair and illogical burdens on injured parties when an act of medical negligence gives rise to multiple claimants, without bearing a rational relationship to its stated purpose of addressing a purported medical malpractice insurance crisis in the state.[7] A malpractice damage cap has also been ruled unconstitutional under a state

constitution, on the basis that there was a fundamental right not to be deprived of life as a consequence of malpractice, and the statute impermissibly placed a specific value on human life with respect to only one isolated class of victims.[8]

A prospective loosening of a malpractice cap violates the equal protection rights of a plaintiff who had a case pending against a private hospital on the act's effective date where a similar exception, enacted later, with regard to malpractice claims against the State, applied to all pending litigation.[9]

Footnotes

1 Alaska—L.D.G., Inc. v. Brown, 211 P.3d 1110 (Alaska 2009).
Cal.—Stinnett v. Tam, 198 Cal. App. 4th 1412, 130 Cal. Rptr. 3d 732 (5th Dist. 2011).
Kan.—Miller v. Johnson, 295 Kan. 636, 289 P.3d 1098 (2012).
Mo.—Adams By and Through Adams v. Children's Mercy Hosp., 832 S.W.2d 898 (Mo. 1992) (overruled on other grounds by, Watts v. Lester E. Cox Medical Centers, 376 S.W.3d 633 (Mo. 2012)).
N.M.—Salopek v. Friedman, 2013-NMCA-087, 308 P.3d 139 (N.M. Ct. App. 2013).
Ohio—Morris v. Savoy, 61 Ohio St. 3d 684, 576 N.E.2d 765 (1991).
Tex.—Prabhakar v. Fritzgerald, 2012 WL 3667400 (Tex. App. Dallas 2012).
Va.—Etheridge v. Medical Center Hospitals, 237 Va. 87, 376 S.E.2d 525 (1989).
W. Va.—Verba v. Ghaphery, 210 W. Va. 30, 552 S.E.2d 406 (2001).
Two-tier statutory damages cap
S.C.—Boiter v. South Carolina Dept. of Transp., 393 S.C. 123, 712 S.E.2d 401 (2011).
A.L.R. Library
Validity, construction, and application of state statutory provisions limiting amount of recovery in medical malpractice claims, 26 A.L.R.5th 245, § 3(a).

2 Kan.—Miller v. Johnson, 295 Kan. 636, 289 P.3d 1098 (2012).
Md.—Murphy v. Edmonds, 325 Md. 342, 601 A.2d 102 (1992).
N.M.—Salopek v. Friedman, 2013-NMCA-087, 308 P.3d 139 (N.M. Ct. App. 2013).
Va.—Pulliam v. Coastal Emergency Services of Richmond, Inc., 257 Va. 1, 509 S.E.2d 307 (1999).
Rational relationship to state interest
S.C.—Boiter v. South Carolina Dept. of Transp., 393 S.C. 123, 712 S.E.2d 401 (2011).
Fair and substantial relationship to legislature's legitimate objective
Alaska—L.D.G., Inc. v. Brown, 211 P.3d 1110 (Alaska 2009).

3 Neb.—Gourley ex rel. Gourley v. Nebraska Methodist Health System, Inc., 265 Neb. 918, 663 N.W.2d 43 (2003).

4 Colo.—Garhart ex rel. Tinsman v. Columbia/Healthone, L.L.C., 95 P.3d 571 (Colo. 2004), as modified on denial of reh'g, (Aug. 16, 2004) and as modified, (Sept. 1, 2004).

5 La.—Kelty v. Brumfield, 633 So. 2d 1210 (La. 1994).

6 Wis.—Bartholomew v. Wisconsin Patients Compensation Fund and Compcare Health Services Ins. Corp., 2006 WI 91, 293 Wis. 2d 38, 717 N.W.2d 216 (2006).

7 Fla.—Estate of McCall v. U.S., 134 So. 3d 894 (Fla. 2014).

8 Ala.—Smith v. Schulte, 671 So. 2d 1334 (Ala. 1995) (abrogated on other grounds by, Ex parte Apicella, 809 So. 2d 865 (Ala. 2001)).
A.L.R. Library
Validity, construction, and application of state statutory provisions limiting amount of recovery in medical malpractice claims, 26 A.L.R.5th 245, § 3(b).

9 La.—Williams v. Kushner, 549 So. 2d 294 (La. 1989).

16C C.J.S. Constitutional Law § 1570

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

b. Particular Causes of Action or Situations

§ 1570. Premises liability

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3166, 3745, 3746, 3751, 3752, 3754, 3760, 3761

Traditional distinctions regarding premises liability, and statutes protecting landowners allowing recreational and similar uses of their property, have generally been upheld when challenged on equal protection grounds.

A state may, without denying equal protection, make a distinction between a business invitee and a licensee[1] or enact a statute prescribing the level of fault required to impose liability for injuries sustained by a guest.[2] However, equal protection is violated when a state imposes on landowners a higher standard of care with respect to licensees than to invitees since the inverted hierarchy of duty is irrational.[3]

Courts have upheld, in the face of equal protection challenges, recreational use statutes,[4] as well as statutes limiting the liability of owners of high-voltage lines;[5] private landowners who allow the operation of motorcycles, snowmobiles, or off road vehicles on their property;[6] and ski area operators.[7] However, a statute providing that, notwithstanding a comparative negligence law, a skier is barred from recovering from a ski area owner for loss from any risk inherent in the sport of skiing did not pass the

rational basis test, as it effectively prohibited a skier from obtaining legal recourse against the operator even if the injury was proximately caused by the operator's negligent or even intentional actions, and thus was needlessly overbroad and went beyond the statute's stated purposes.[8]

Footnotes

1 Ga.—Delk v. Sellers, 149 Ga. App. 439, 254 S.E.2d 446 (1979).

2 Del.—Bailey v. Pennington, 406 A.2d 44 (Del. 1979).

3 Colo.—Gallegos v. Phipps, 779 P.2d 856 (Colo. 1989).

4 Idaho—Johnson v. Sunshine Min. Co., Inc., 106 Idaho 866, 684 P.2d 268 (1984).
Kan.—Barrett ex rel. Barrett v. Unified School Dist. No. 259, 272 Kan. 250, 32 P.3d 1156, 157 Ed. Law Rep. 917 (2001).
Mo.—Foster v. St. Louis County, 239 S.W.3d 599 (Mo. 2007).
N.D.—Olson v. Bismarck Parks and Recreation Dist., 2002 ND 61, 642 N.W.2d 864 (N.D. 2002).
Inclusion of nonprofit organizations
Wis.—Szarzynski v. YMCA, Camp Minikani, 184 Wis. 2d 875, 517 N.W.2d 135 (1994).

5 Ga.—Santana v. Georgia Power Co., 269 Ga. 127, 498 S.E.2d 521 (1998).

6 Conn.—Warner v. Leslie-Elliott Constructors, Inc., 194 Conn. 129, 479 A.2d 231 (1984).
Ill.—Ostergren v. Forest Preserve Dist. of Will County, 104 Ill. 2d 128, 83 Ill. Dec. 892, 471 N.E.2d 191 (1984).
N.H.—Lorette v. Peter-Sam Inv. Properties, 142 N.H. 208, 697 A.2d 1386 (1997).

7 Idaho—Northcutt v. Sun Valley Co., 117 Idaho 351, 787 P.2d 1159 (1990).
N.H.—Nutbrown v. Mount Cranmore, Inc., 140 N.H. 675, 671 A.2d 548 (1996).
N.D.—Bouchard v. Johnson, 555 N.W.2d 81 (N.D. 1996).
W. Va.—Lewis v. Canaan Valley Resorts, Inc., 185 W. Va. 684, 408 S.E.2d 634 (1991).

8 Mont.—Brewer v. Ski-Lift, Inc., 234 Mont. 109, 762 P.2d 226 (1988).

16C C.J.S. Constitutional Law § 1571

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

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2. Liability for Personal Injuries

b. Particular Causes of Action or Situations

§ 1571. Motor vehicle and aircraft accidents

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3755, 3756

While statutes making certain classifications with regard to liability for automobile or aircraft accidents do not violate equal protection, there is a division of authority with regard to the constitutionality of guest statutes.

In connection with the operation of motor vehicles, a state may, without denying equal protection, enact statutes creating, discharging, or regulating the liability of such persons as lessors of vehicles;[1] abrogating parent-child immunity only with regard to automobile accidents;[2] or providing limited immunity for the operation of emergency vehicles,[3] but statutes that contain unreasonable classifications, such as a comparative negligence statute only applicable to automobile accident cases, may violate equal protection.[4]

The Equal Protection Clause does not require that a legislative restriction on the liability of persons operating vehicles for injuries to mere guests or licensees reach every class to which it might be applied,[5] and a state may distinguish between motor vehicles and other vehicles, or between gratuitous and paying passengers, and restrict liability in cases of injuries to guests.[6]

While there is authority to the contrary,[7] it is often held that a statute relieving the owner or operator of a motor vehicle from liability for injuries to a guest, unless caused by misconduct exceeding ordinary negligence, does not violate equal protection.[8]

A statute making an owner liable for injuries caused by the negligence of an operator using a motor vehicle with the owner's permission does not deny equal protection,[9] but denying recovery to an owner-passenger of an automobile, except in limited cases, violates the Equal Protection Clause.[10]

Aircraft.

Although there is some authority to the contrary,[11] a statute denying recovery to a guest passenger of an aircraft, except in cases of the pilot's or owner's intoxication or willful neglect, is generally considered a denial of equal protection.[12] A statute that makes aircraft owners absolutely liable for injuries to persons on the ground caused by the aircraft, but which makes a nonowner liable only for the consequences of his or her own negligence, has been upheld.[13]

Footnotes

1 U.S.—Carton v. General Motors Acceptance Corp., 639 F. Supp. 2d 982 (N.D. Iowa 2009), aff'd, 611 F.3d 451 (8th Cir. 2010).
Fla.—Abdala v. World Omni Leasing, Inc., 583 So. 2d 330 (Fla. 1991).
Mich.—Phillips v. Mirac, Inc., 470 Mich. 415, 685 N.W.2d 174 (2004).
Neb.—Bridgeford v. U-Haul Co., 195 Neb. 308, 238 N.W.2d 443 (1976).

2 Md.—Allstate Ins. Co. v. Kim, 376 Md. 276, 829 A.2d 611 (2003).

3 Ohio—Fahnbulleh v. Strahan, 73 Ohio St. 3d 666, 1995-Ohio-295, 653 N.E.2d 1186 (1995).

4 S.C.—Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978).

5 U.S.—Silver v. Silver, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221, 65 A.L.R. 939 (1929).

6 U.S.—Silver v. Silver, 280 U.S. 117, 50 S. Ct. 57, 74 L. Ed. 221, 65 A.L.R. 939 (1929).
Fla.—Loftin v. Crowley's Inc., 150 Fla. 836, 8 So. 2d 909, 142 A.L.R. 626 (1942).
Rational basis test applies
Neb.—Le v. Lautrup, 271 Neb. 931, 716 N.W.2d 713 (2006).

7 Cal.—Brown v. Merlo, 8 Cal. 3d 855, 106 Cal. Rptr. 388, 506 P.2d 212, 66 A.L.R.3d 505 (1973).
Idaho—Thompson v. Hagan, 96 Idaho 19, 523 P.2d 1365 (1974).
Iowa—Bierkamp v. Rogers, 293 N.W.2d 577 (Iowa 1980).
Kan.—Henry v. Bauder, 213 Kan. 751, 518 P.2d 362 (1974).
Nev.—Laakonen v. Eighth Judicial Dist. Court In and For Clark County, 91 Nev. 506, 538 P.2d 574 (1975).
N.M.—McGeehan v. Bunch, 1975-NMSC-055, 88 N.M. 308, 540 P.2d 238 (1975).
Ohio—Primes v. Tyler, 43 Ohio App. 2d 163, 72 Ohio Op. 2d 393, 335 N.E.2d 373 (9th Dist. Summit County 1974), judgment aff'd, 43 Ohio St. 2d 195, 72 Ohio Op. 2d 112, 331 N.E.2d 723 (1975).
S.C.—Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979).
Utah—Malan v. Lewis, 693 P.2d 661 (Utah 1984).

8 U.S.—Corey v. Jones, 650 F.2d 803 (5th Cir. 1981).
Ark.—Delaney v. Mize, 269 Ark. 194, 599 S.W.2d 710 (1980).
Colo.—Drake v. Albeke, 188 Colo. 14, 532 P.2d 335 (1975).
Del.—Pierce v. Bierer, 447 A.2d 1189 (Del. 1982).
Ind.—Brady v. Acs, 264 Ind. 285, 342 N.E.2d 837 (1976).
Neb.—Circo v. Sisson, 193 Neb. 704, 229 N.W.2d 50 (1975).
Or.—Duerst v. Limbocker, 269 Or. 252, 525 P.2d 99 (1974).
Tex.—Tisko v. Harrison, 500 S.W.2d 565 (Tex. Civ. App. Dallas 1973), writ refused n.r.e., (Feb. 27, 1974).
Even if bars noncollusive claims

Ga.—Bickford v. Nolen, 240 Ga. 255, 240 S.E.2d 24 (1977).

9 U.S.—Young v. Masci, 289 U.S. 253, 53 S. Ct. 599, 77 L. Ed. 1158, 88 A.L.R. 170 (1933).

10 Cal.—Monroe v. Monroe, 90 Cal. App. 3d 388, 153 Cal. Rptr. 384 (4th Dist. 1979).

11 Ill.—Praznik v. Sport Aero, Inc., 42 Ill. App. 3d 330, 355 N.E.2d 686 (1st Dist. 1976).

12 Cal.—Ayer v. Boyle, 37 Cal. App. 3d 822, 112 Cal. Rptr. 636 (1st Dist. 1974).

Idaho—Messmer v. Ker, 96 Idaho 75, 524 P.2d 536 (1974).

13 S.C.—Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977).

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16C C.J.S. Constitutional Law § 1572

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PART VI. Privileges and Immunities; Equal Protection

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2. Liability for Personal Injuries

b. Particular Causes of Action or Situations

§ 1572. Motor vehicle and aircraft accidents—No fault laws

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3755, 3756

No fault laws have generally been upheld in the face of equal protection challenges.

Statutes establishing an automobile insurance compensation system regardless of fault have been sustained where the classifications created have a rational basis.[1] Accordingly, the courts have upheld provisions of the no fault laws excluding particular vehicles from coverage[2] or excluding particular persons, including operators of motorcycles[3] and nonresidents.[4]

Other particular provisions of automobile no fault insurance laws that have been sustained as comporting with equal protection are those requiring, in the case of a nonoccupant of a motor vehicle, that the injury be caused by physical contact with a motor vehicle;[5] establishing threshold requirements to recover for noneconomic loss arising out of motor vehicle accidents,[6] including with regard to permanent or serious injuries;[7] denying injured uninsured drivers the right to recover noneconomic damages, since there is a state interest in all drivers complying with the insurance laws;[8] excluding recovery by injured persons who

do not suffer any actual work loss;[9] eliminating the right to sue a tortfeasor for punitive damages;[10] and limiting the persons entitled to survivor's benefits.[11]

With regard to the benefits allowed under a no fault law, courts have upheld provisions limiting the amount of medical expenses recoverable;[12] affecting subrogation rights;[13] coordinating benefits with those available under a health plan;[14] requiring the reduction of benefits received under no fault coverage by the amounts received from collateral sources;[15] requiring workers' compensation benefits to be credited against first party benefits, while not requiring the reduction of benefits from other collateral sources;[16] requiring benefits payable under a no fault insurance policy to be reduced by state or federal benefits received, but not requiring an analogous setoff of benefits under private health or accident insurance programs;[17] and providing for the payment of income continuation benefits without regard to collateral sources except that certain benefits are subject to being deducted.[18] On the other hand, the courts have found that equal protection was violated by a statute permitting recovery for pain and suffering if the injury involved consists wholly or partly of a fracture to a weight-bearing bone, without regard to the medical payments threshold or whether the injury results in death or permanent injury,[19] and a statute requiring only those accident victims suffering serious injuries to indemnify their no fault insurance companies, out of damage awards covering noneconomic losses, for amounts paid them for economic losses.[20]

CUMULATIVE SUPPLEMENT

Cases:

Healthcare provider was not statutorily entitled to maintain an action against state assigned claims plan and state automobile insurance placement facility for personal protection insurance (PIP) benefits, after provider treated patient who had been injured in an automobile accident in which patient was not covered by a no fault insurance policy. Bronson Healthcare Group, Inc. v. Michigan Assigned Claims Plan, 323 Mich. App. 302, 917 N.W.2d 682 (2018).

[END OF SUPPLEMENT]

Footnotes

1 Haw.—Del Rio v. Crake, 87 Haw. 297, 955 P.2d 90 (1998).
Ky.—Stinnett v. Mulquin, 579 S.W.2d 374 (Ky. Ct. App. 1978).
Mich.—Harris v. McVickers, 88 Mich. App. 508, 276 N.W.2d 629 (1979).

2 Colo.—Bushnell v. Sapp, 194 Colo. 273, 571 P.2d 1100 (1977).
Fla.—Lasky v. State Farm Ins. Co., 296 So. 2d 9 (Fla. 1974).
Md.—Harden v. Mass Transit Administration, 277 Md. 399, 354 A.2d 817 (1976).

3 Fla.—Morse v. State Farm Mut. Auto. Ins. Co., 328 So. 2d 542 (Fla. 3d DCA 1976).
Mich.—Shavers v. Kelley, 402 Mich. 554, 267 N.W.2d 72 (1978).
Pa.—Samsel v. Travelers Indem. Co., 295 Pa. Super. 188, 441 A.2d 412 (1982).

4 Mich.—Gersten v. Blackwell, 111 Mich. App. 418, 314 N.W.2d 645 (1981).
N.Y.—Montgomery v. Daniels, 38 N.Y.2d 41, 378 N.Y.S.2d 1, 340 N.E.2d 444 (1975).

5 Fla.—Lumbermens Mut. Cas. Co. v. Castagna, 368 So. 2d 348 (Fla. 1979).

6 Colo.—Bushnell v. Sapp, 194 Colo. 273, 571 P.2d 1100 (1977).
Conn.—Gentile v. Altermatt, 169 Conn. 267, 363 A.2d 1 (1975).
Mass.—Cyr v. Farias, 367 Mass. 720, 327 N.E.2d 890 (1975).
N.H.—Opinion of the Justices, 113 N.H. 205, 304 A.2d 881 (1973).

N.J.—Rybeck v. Rybeck, 141 N.J. Super. 481, 358 A.2d 828 (Law Div. 1976).

N.Y.—Montgomery v. Daniels, 38 N.Y.2d 41, 378 N.Y.S.2d 1, 340 N.E.2d 444 (1975).

7 Fla.—Lasky v. State Farm Ins. Co., 296 So. 2d 9 (Fla. 1974).

Ga.—Williams v. Kennedy, 240 Ga. 163, 240 S.E.2d 51 (1977).

8 N.J.—Caviglia v. Royal Tours of America, 178 N.J. 460, 842 A.2d 125 (2004).

9 Mich.—Struble v. Detroit Auto. Inter-Insurance Exchange, 86 Mich. App. 245, 272 N.W.2d 617 (1978).

10 Ga.—Teasley v. Mathis, 243 Ga. 561, 255 S.E.2d 57 (1979).

11 **Spouse and children**

Ga.—Cannon v. Georgia Farm Bureau Mut. Ins. Co., 240 Ga. 479, 241 S.E.2d 238 (1978).

12 Mass.—Pinnick v. Cleary, 360 Mass. 1, 271 N.E.2d 592, 42 A.L.R.3d 194 (1971).

13 Ga.—Bituminous Cas. Corp. v. Prudential Property & Cas. Ins. Co., 247 Ga. 481, 277 S.E.2d 23 (1981).

14 Mass.—Dominguez v. Liberty Mut. Ins. Co., 429 Mass. 112, 706 N.E.2d 647 (1999).

15 Fla.—Purdy v. Gulf Breeze Enterprises, Inc., 403 So. 2d 1325 (Fla. 1981).

16 Fla.—Lasky v. State Farm Ins. Co., 296 So. 2d 9 (Fla. 1974).

17 Mich.—O'Donnell v. State Farm Mut. Auto. Ins. Co., 404 Mich. 524, 273 N.W.2d 829, 10 A.L.R.4th 958 (1979).

Military medical benefits

Mich.—Crowley v. Detroit Auto. Inter-Insurance Exchange, 428 Mich. 270, 407 N.W.2d 372 (1987).

18 N.J.—Frazier v. Liberty Mut. Ins. Co., 150 N.J. Super. 123, 374 A.2d 1259 (Law Div. 1977).

19 Fla.—Lasky v. State Farm Ins. Co., 296 So. 2d 9 (Fla. 1974).

20 Mich.—Murray v. Ferris, 74 Mich. App. 91, 253 N.W.2d 365 (1977).

End of Document

16C C.J.S. Constitutional Law § 1573

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

b. Particular Causes of Action or Situations

§ 1573. Wrongful death

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3753

Classifications in wrongful death statutes must meet the rational basis test.

A court applies the rational basis test[1] when determining whether a classification is constitutional as applied in wrongful death actions.[2] The courts have upheld the statutory recognition of the right of action for wrongful death in various persons,[3] as well as statutes denying a cause of action to parents of a stillborn fetus[4] or of an adult married decedent[5] or to children against a stepparent.[6] Also, a statute that prohibits an unfaithful spouse of the decedent from being an heir who may bring an action for wrongful death has been upheld.[7]

Courts have upheld wrongful death provisions precluding recovery for the loss of companionship and society of a child[8] or an adult child,[9] unless the parent was financially dependent on the child,[10] and limiting the amount of recovery for wrongful death either generally or in the absence of particular beneficiaries.[11] Furthermore, statutes have been upheld that deny punitive

damages in wrongful death actions.[12] Conversely, exempting wrongful death actions from statutory caps on punitive damages awards applicable to other cases bore a rational relationship to one state's interest in punishing those whose conduct resulted in loss of human life and thus also did not violate equal protection.[13]

Illegitimate children.

The denial to illegitimate children of the right to recover for the wrongful death of their parent on whom they are dependent constitutes invidious discrimination.[14] Furthermore, equal protection may be denied by a law that conclusively precludes a child born after the father's death from establishing paternity for the purpose of bringing a wrongful death action.[15] However, a statute that denies an illegitimate child the right to recover damages for the wrongful death of a father who has not acknowledged the child has been upheld.[16]

CUMULATIVE SUPPLEMENT

Cases:

A criminal defendant has a fundamental right to be proven guilty beyond a reasonable doubt grounded in the due process protections of the Fifth and Fourteenth Amendments to the United States Constitution. U.S.C.A. Const.Amends. 5, 14. Mashaney v. Board of Indigents' Defense Services, 355 P.3d 667 (Kan. 2015).

[END OF SUPPLEMENT]

Footnotes

1 § 1279.

2 Ga.—Jones v. Jones, 259 Ga. 49, 376 S.E.2d 674 (1989).
Wash.—Bennett v. Seattle Mental Health, 166 Wash. App. 477, 269 P.3d 1079 (Div. 1 2012).

3 **Spouse and lineal descendants**
Fla.—Vildibill v. Johnson, 492 So. 2d 1047 (Fla. 1986).
Adoption of probate definition of heir
Idaho—Nebeker v. Piper Aircraft Corp., 113 Idaho 609, 747 P.2d 18 (1987).

4 U.S.—Simon v. U. S., 438 F. Supp. 759 (S.D. Fla. 1977).
Cal.—Justus v. Atchison, 19 Cal. 3d 564, 139 Cal. Rptr. 97, 565 P.2d 122 (1977) (disapproved of on other grounds by, Ochoa v. Superior Court, 39 Cal. 3d 159, 216 Cal. Rptr. 661, 703 P.2d 1 (1985)).
Md.—Kandel v. White, 339 Md. 432, 663 A.2d 1264 (1995).
Tex.—Fort Worth Osteopathic Hosp., Inc. v. Reese, 148 S.W.3d 94 (Tex. 2004).

5 Colo.—McGill v. General Motors Corp., 174 Colo. 388, 484 P.2d 790 (1971).

6 Ga.—Jones v. Swett, 244 Ga. 715, 261 S.E.2d 610 (1979).

7 U.S.—Aspinall v. McDonnell Douglas Corp., 625 F.2d 325 (9th Cir. 1980).

8 Ohio—Keaton v. Ribbeck, 58 Ohio St. 2d 443, 12 Ohio Op. 3d 375, 391 N.E.2d 307 (1979).

9 Iowa—Kuta v. Newberg, 600 N.W.2d 280 (Iowa 1999).

10 Wash.—Philippides v. Bernard, 151 Wash. 2d 376, 88 P.3d 939 (2004), as amended, (May 4, 2004).

11 Colo.—Pollock v. City and County of Denver, 194 Colo. 380, 572 P.2d 828 (1977).
Idaho—Stucki v. Loveland, 94 Idaho 621, 495 P.2d 571 (1972).
Mass.—Owen v. Meserve, 381 Mass. 273, 408 N.E.2d 867 (1980).
Or.—Greist v. Phillips, 322 Or. 281, 906 P.2d 789 (1995).

Vt.—Quesnel v. Town of Middlebury, 167 Vt. 252, 706 A.2d 436 (1997).

As to caps on malpractice recoveries, see § 1569.

No surviving dependents

N.H.—Trovato v. DeVeau, 143 N.H. 523, 736 A.2d 1212 (1999).

12 U.S.—In re Air Crash Disaster Near Chicago, Illinois on May 25, 1979, 644 F.2d 594 (7th Cir. 1981).

Cal.—Georgie Boy Manufacturing, Inc. v. Superior Court, 115 Cal. App. 3d 217, 171 Cal. Rptr. 382 (2d Dist. 1981).

Ind.—Durham ex rel. Estate of Wade v. U-Haul Intern., 745 N.E.2d 755 (Ind. 2001).

13 Ala.—Killough v. Jahandarfard, 578 So. 2d 1041 (Ala. 1990).

14 U.S.—Levy v. Louisiana, 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968).

As to the equal protection rights of children born out of wedlock, generally, see § 1585.

15 Wis.—Le Fevre by Grapentin v. Schrieber, 167 Wis. 2d 733, 482 N.W.2d 904 (1992).

16 Miss.—Sanders v. Tillman, 245 So. 2d 198 (Miss. 1971).

End of Document

16C C.J.S. Constitutional Law § 1574

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

b. Particular Causes of Action or Situations

§ 1574. Liability to employees

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

Laws that modify an employer's common-law liability do not violate equal protection.

A state may, without denying equal protection, modify or enlarge the common-law liability of employers to employees for personal injuries[1] as by abolishing the fellow servant rule,[2] or the defenses of contributory negligence and assumed risk,[3] or imposing on the employer the absolute obligation to furnish safe appliances,[4] or safeguard dangerous machinery;[5] imposing on an employer liability for injury to a minor employed without an employment certificate;[6] or extending the benefits of an employers' liability act to a deceased employee's estate.[7] However, a common-law cause of action for retaliatory discharge, which is available to injured employees in nonrailroad industries, does not have to be extended by the court to railroad employees discharged for filing a personal injury claim under the Federal Employers' Liability Act as the government has a legitimate interest in preserving at-will employment and in not creating new causes of action without legislative authorization.[8]

A legislature may, on a proper basis of the hazards involved, classify the employments to which such a statute is applicable.[9]

A statute that imposes on corporations generally liability for injuries to their employees as a result of other employees' negligence does not violate equal protection.[10] A distinction between corporate and other employers in determining whether an injured employee may recover from the employer's officer as a fellow employee does not violate equal protection.[11] However, a statute that imposes on corporations operating railroads greater liability to employees than that of individuals operating railroads is invalid.[12]

A statute imposing liability on operators of mines is constitutional even though it is mandatory as to coal mining companies and permissive as to other corporations.[13] A legislature may declare void any contract subsequently made releasing or modifying the liability of railroad companies, for future injuries, within the scope of the act, without violating equal protection.[14]

Footnotes

1 N.D.—State for Benefit of Workmen's Compensation Fund v. E. W. Wylie Co., 79 N.D. 471, 58 N.W.2d 76 (1953).

2 Ark.—Postal Telegraph-Cable Co. v. White, 190 Ark. 365, 80 S.W.2d 633 (1935).
As to its abolition by workers' compensation acts, see § 1576.
Railroad workers
U.S.—Chicago, I. & L.R. Co. v. Hackett, 228 U.S. 559, 33 S. Ct. 581, 57 L. Ed. 966 (1913).

3 U.S.—Jeffrey Mfg. Co. v. Blagg, 235 U.S. 571, 35 S. Ct. 167, 59 L. Ed. 364 (1915).

4 Minn.—Majavis v. Great Northern Ry. Co., 121 Minn. 431, 141 N.W. 806 (1913).

5 U.S.—Bowersock v. Smith, 243 U.S. 29, 37 S. Ct. 371, 61 L. Ed. 572 (1917).

6 Ill.—Gill v. Boston Store of Chicago, 337 Ill. 70, 168 N.E. 895 (1929).

7 Ariz.—Stargo Mines Co. v. Coffee, 28 Ariz. 527, 238 P. 335 (1925).

8 Ill.—Irizarry v. Illinois Cent. R. Co., 377 Ill. App. 3d 486, 316 Ill. Dec. 619, 879 N.E.2d 1007 (1st Dist. 2007).

9 Ill.—McNellis v. Combustion Engineerings, Inc., 13 Ill. App. 3d 733, 301 N.E.2d 96 (1st Dist. 1973), judgment aff'd, 58 Ill. 2d 146, 317 N.E.2d 573 (1974).
Jobs specified as inherently dangerous
U.S.—Arizona Copper Co. v. Hammer, 250 U.S. 400, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A.L.R. 1537 (1919).

10 U.S.—Phillips Petroleum Co. v. Jenkins, 297 U.S. 629, 56 S. Ct. 611, 80 L. Ed. 943 (1936).

11 Vt.—Sienkiewycz v. Dressell, 151 Vt. 421, 561 A.2d 415 (1989).

12 U.S.—Aluminum Co. of America v. Ramsey, 222 U.S. 251, 32 S. Ct. 76, 56 L. Ed. 185 (1911).

13 U.S.—Lower Vein Coal Co. v. Industrial Bd. of Indiana, 255 U.S. 144, 41 S. Ct. 252, 65 L. Ed. 555 (1921).

14 U.S.—Chicago, B. & Q.R. Co. v. McGuire, 219 U.S. 549, 31 S. Ct. 259, 55 L. Ed. 328 (1911).

16C C.J.S. Constitutional Law § 1575

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1575. Validity under equal protection laws of workers' compensation statutes, generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

Equal protection is generally not violated by workers' compensation acts.

Workers' compensation acts generally do not violate equal protection.[1] Inasmuch as a workers' compensation statute does not infringe upon the rights of a suspect class or involve fundamental rights,[2] courts typically apply the rational basis test in assessing the validity of a workers' compensation classification as against an equal protection challenge.[3] A legislature, in adopting a workers' compensation act, may, without being arbitrary and violating equal protection, classify employees, employers, and occupations in such as manner as, in its judgment, is necessary for the public welfare.[4] It may classify occupations according to their respective hazards,[5] but a classification that is not reasonable and necessary is invalid.[6]

If all employers complying with a workers' compensation act are exempted from liability at common law, the fact that the exemption applies only to claims by their own employees does not violate equal protection.[7]

Footnotes

1 Alaska—Glover v. State, Dept. of Transp., Alaska Marine Highway System, 175 P.3d 1240 (Alaska 2008).
Ark.—Hagger v. Wortz Biscuit Co., 210 Ark. 318, 196 S.W.2d 1 (1946).
Colo.—Olson v. Public Service Co., 190 Colo. 512, 549 P.2d 780 (1976).
Mont.—Alexander v. Bozeman Motors, Inc., 2010 MT 135, 356 Mont. 439, 234 P.3d 880 (2010).
Pa.—Menginie v. Savine, 170 Pa. Super. 582, 88 A.2d 106 (1952).

2 Mont.—Satterlee v. Lumberman's Mut. Cas. Co., 2009 MT 368, 353 Mont. 265, 222 P.3d 566 (2009).

3 Ky.—Copley v. Pike Elec., 2009 WL 1037565 (Ky. Ct. App. 2009).
Minn.—Gluba ex rel. Gluba v. Bitzan & Ohren Masonry, 735 N.W.2d 713 (Minn. 2007).
Deposits by private insurers
N.Y.—Raynor v. Landmark Chrysler, 18 N.Y.3d 48, 936 N.Y.S.2d 63, 959 N.E.2d 1011 (2011).
Limitation on medical payments
Pa.—Babu v. W.C.A.B. (Temple Continuing Care Center), 100 A.3d 726 (Pa. Commw. Ct. 2014).
Subrogation
Ohio—Groch v. Gen. Motors Corp., 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377 (2008).

4 U.S.—Lower Vein Coal Co. v. Industrial Bd. of Indiana, 255 U.S. 144, 41 S. Ct. 252, 65 L. Ed. 555 (1921).
Colo.—Duran v. Industrial Claim Appeals Office of State of Colo., 883 P.2d 477 (Colo. 1994).
Mass.—Price v. Railway Exp. Agency, 322 Mass. 476, 78 N.E.2d 13 (1948).
Wyo.—Zancanelli v. Central Coal & Coke Co., 25 Wyo. 511, 173 P. 981 (1918).
Distinction between railroad industries and nonrailroad industries
Ill.—Irizarry v. Illinois Cent. R. Co., 377 Ill. App. 3d 486, 316 Ill. Dec. 619, 879 N.E.2d 1007 (1st Dist. 2007).

5 U.S.—Mountain Timber Co. v. State of Washington, 243 U.S. 219, 37 S. Ct. 260, 61 L. Ed. 685 (1917).
Mass.—In re Opinion of the Justices, 309 Mass. 562, 35 N.E.2d 1 (1941).
Wyo.—Ideal Bakery v. Schryver, 43 Wyo. 108, 299 P. 284 (1931).

6 **State employees**
Tex.—Martin v. Sheppard, 145 Tex. 639, 201 S.W.2d 810 (1947).
Illegally employed minor
Provisions of a compensation act requiring the payment of double normal compensation in case of injury to a minor illegally employed, without regard to differences in the basic merits or seriousness of the employer's offense, is arbitrary and capricious and violates equal protection.
Pa.—Rudy v. McCloskey & Co., 348 Pa. 401, 35 A.2d 250 (1944).

7 N.D.—State for Benefit of Workmen's Compensation Fund v. E. W. Wylie Co., 79 N.D. 471, 58 N.W.2d 76 (1953).

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16C C.J.S. Constitutional Law § 1576

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1576. Exclusive remedy

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

Equal protection is generally not violated by exclusive remedy provisions of a workers' compensation act, including those denying a tort remedy against a fellow worker or compensation carrier.

Equal protection is not denied by a workers' compensation act providing an exclusive remedy to the employee or dependents for the employee's injury[1] or death.[2]

Equal protection is not violated by the denial of a cause of action to an employee, eligible for workers' compensation, for a fellow employee's negligent operation of a motor vehicle,[3] or by a workers' compensation statute precluding suit against a coworker except for an intentional tort.[4]

Courts have upheld, as consistent with equal protection, provisions that confer immunity from tort suits on compensation carriers.[5]

Equal protection is not violated by a provision that accords only to employees injured in motor vehicle accidents the right to make claims against their employers for first party benefits under no fault insurance coverage, in addition to workers' compensation benefits.[6] Also, a workers' compensation act's different standards of exclusivity for employees versus employers, providing compensation under the act for employees injured by employer's willful negligence, but not providing compensation under the act for employees injured by their own willful negligence, does not violate equal protection where employers and employees stand in different relations to the common undertaking and are not similarly situated; it is not arbitrary for the legislature to determine coverage under the act based on whose willful negligence caused the injury.[7]

Footnotes

1 U.S.—Davidson v. Hobart Corp., 643 F.2d 1386 (10th Cir. 1981).
Cal.—Wright v. FMC Corp., 81 Cal. App. 3d 777, 146 Cal. Rptr. 740 (1st Dist. 1978).
Fla.—Carter v. Sims Crane Service, Inc., 198 So. 2d 25 (Fla. 1967).
Ga.—Williams v. Byrd, 242 Ga. 80, 247 S.E.2d 874 (1978).
Ill.—Sweeney v. City of Chicago, 131 Ill. App. 2d 537, 266 N.E.2d 689 (1st Dist. 1971).
Kan.—Primm v. Kansas Power & Light Co., 173 Kan. 443, 249 P.2d 647 (1952).
La.—Tobin v. Jacobson, 369 So. 2d 1161 (La. Ct. App. 1st Cir. 1979).
Ohio—Allen v. Eastman Kodak Co., 50 Ohio App. 2d 216, 4 Ohio Op. 3d 179, 362 N.E.2d 665 (10th Dist. Franklin County 1976).
R.I.—Boucher v. McGovern, 639 A.2d 1369 (R.I. 1994).
Wyo.—Mauch v. Stanley Structures, Inc., 641 P.2d 1247 (Wyo. 1982).
Prisoners
N.C.—Richardson v. North Carolina Dept. of Correction, 345 N.C. 128, 478 S.E.2d 501 (1996).
Extension of exclusivity provisions to project owners
Alaska—Schiel v. Union Oil Co. of California, 219 P.3d 1025 (Alaska 2009).

2 Ala.—Slagle v. Reynolds Metals Co., 344 So. 2d 1216 (Ala. 1977).
Or.—Leech v. Georgia-Pacific Corp., 259 Or. 161, 485 P.2d 1195 (1971).
Wash.—West v. Zeibell, 87 Wash. 2d 198, 550 P.2d 522 (1976).

3 U.S.—Carr v. U.S., 422 F.2d 1007 (4th Cir. 1970).
Conn.—Keogh v. City of Bridgeport, 187 Conn. 53, 444 A.2d 225 (1982).

4 Ala.—Reed v. Brunson, 527 So. 2d 102 (Ala. 1988).
La.—Bazley v. Tortorich, 397 So. 2d 475 (La. 1981).
As to the constitutionality of the abolition of fellow servant liability, generally, see § 1574.

5 Ill.—Towns v. Kessler, 10 Ill. App. 3d 356, 293 N.E.2d 761 (5th Dist. 1973).
Mich.—Shwary v. Cranetrol Corp., 88 Mich. App. 264, 276 N.W.2d 882 (1979).

6 N.Y.—Ryder Truck Lines, Inc. v. Maiorano, 44 N.Y.2d 364, 405 N.Y.S.2d 666, 376 N.E.2d 1311 (1978).

7 Neb.—Estate of Teague by and through Martinosky v. Crossroads Cooperative Association, 286 Neb. 1, 834 N.W.2d 236 (2013).

16C C.J.S. Constitutional Law § 1577

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1577. Coverage

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

Elective and compulsory workers' compensation acts have generally been upheld, and an act may rationally classify the employers and workers subject to it.

Elective workers' compensation acts are not subject to the objection that they deprive the parties of equal protection,[1] and the same conclusion has been reached as to compulsory insurance laws[2] and compulsory compensation acts with optional insurance features.[3] A legislature may make the act, because of peculiar conditions, mandatory as to certain employers and permissive as to others.[4]

While the exclusion of state and municipal workers from a workers' compensation act does not deny equal protection,[5] a city is not deprived of the equal protection by a provision denying it the right to reject the provisions of a compensation act.[6] Since certain Indian businesses are exempt from a workers' compensation act, equal protection is not denied by excluding their

employees from participating in an uninsured employers' fund, which is designed to provide benefits to injured employees of employers subject to, but failing to comply with, the act.[7]

Provisions that specify the minimum number of employees in a single employment that may be made the basis of a group under a workers' compensation act have been upheld.[8] While a statute allowing small business owners to elect not to provide workers' compensation coverage for employees who are family member does not deny equal protection,[9] a distinction based on whether the family member resides in the owner's household does.[10]

Certain classes of employees may be excluded from the benefits of a workers' compensation act,[11] such as those engaged in agriculture[12] or participating in a community work experience program;[13] however, a clause of a compensation act that would have the effect of excluding those who, at some time during their employment, were, in some way, engaged in selling newspapers or magazines to the general public is invalid where no reasonable basis for the exclusion could be perceived.[14]

A provision that estops the employer or insurer from denying that an employee scheduled and included in determining the premium is included within the coverage of the statute does not violate equal protection.[15]

CUMULATIVE SUPPLEMENT

Cases:

A defendant is entitled to introduction of otherwise inadmissible evidence pursuant to his due process right to present a theory of defense only if it is reliable and exclusion would significantly undermine the fundamental elements of the defense; otherwise, the traditional rules of evidence apply. U.S.C.A. Const.Amend. 14. Hancock v. Trammell, 798 F.3d 1002 (10th Cir. 2015).

[END OF SUPPLEMENT]

Footnotes

1 Okla.—Veazey Drug Co. v. Collins, 1951 OK 71, 204 Okla. 238, 228 P.2d 1015 (1951).
Wis.—Pierce v. Barker, 188 Wis. 53, 205 N.W. 496 (1925), aff'd, 274 U.S. 718, 47 S. Ct. 589, 71 L. Ed. 1322 (1927).
Elective workers' compensation acts are covered in C.J.S., Workers' Compensation §§ 274 to 284.
Employer's option
W. Va.—Shackleford v. Catlett, 161 W. Va. 568, 244 S.E.2d 327 (1978).

2 U.S.—Mountain Timber Co. v. State of Washington, 243 U.S. 219, 37 S. Ct. 260, 61 L. Ed. 685 (1917).

3 U.S.—Ward & Gow v. Krinsky, 259 U.S. 503, 42 S. Ct. 529, 66 L. Ed. 1033, 28 A.L.R. 1207 (1922).
Insurance or proof of financial ability
U.S.—New York Cent. R. Co. v. White, 243 U.S. 188, 37 S. Ct. 247, 61 L. Ed. 667 (1917).

4 U.S.—Lower Vein Coal Co. v. Industrial Bd. of Indiana, 255 U.S. 144, 41 S. Ct. 252, 65 L. Ed. 555 (1921).
Mass.—In re Opinion of the Justices, 309 Mass. 562, 35 N.E.2d 1 (1941).

5 Or.—McLean v. State Indus. Acc. Commission, 189 Or. 405, 221 P.2d 566 (1950).
School districts
Miss.—Adams v. Petal Mun. Separate School Systems, 487 So. 2d 1329, 32 Ed. Law Rep. 412 (Miss. 1986).
State university employees
Tex.—Alobaidi v. University of Texas Health Science Center at Houston, 243 S.W.3d 741, 229 Ed. Law Rep. 944 (Tex. App. Houston 14th Dist. 2007).

6 Ga.—City of Macon v. Benson, 175 Ga. 502, 166 S.E. 26 (1932).

7 Mont.—Zempel v. Uninsured Employers' Fund, 282 Mont. 424, 938 P.2d 658 (1997).

8 U.S.—Ward & Gow v. Krinsky, 259 U.S. 503, 42 S. Ct. 529, 66 L. Ed. 1033, 28 A.L.R. 1207 (1922).
Miss.—Walters v. Blackledge, 220 Miss. 485, 71 So. 2d 433 (1954).
Wyo.—Zancanelli v. Central Coal & Coke Co., 25 Wyo. 511, 173 P. 981 (1918).

9 Minn.—Lende v. Lende Const. Co., 417 N.W.2d 633 (Minn. 1988).

10 Mont.—Cottrill v. Cottrill Sodding Service, 229 Mont. 40, 744 P.2d 895 (1987).

11 U.S.—Middleton v. Texas Power & Light Co., 249 U.S. 152, 39 S. Ct. 227, 63 L. Ed. 527 (1919).

12 U.S.—New York Cent. R. Co. v. White, 243 U.S. 188, 37 S. Ct. 247, 61 L. Ed. 667 (1917).
Colo.—Anaya v. Industrial Commission, 182 Colo. 244, 512 P.2d 625 (1973).
Ky.—Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44 (Ky. Ct. App. 1978).
Me.—Zorn v. Carl R. Smith Potatoes, 1997 ME 223, 704 A.2d 864 (Me. 1997).
Neb.—Otto v. Hahn, 209 Neb. 114, 306 N.W.2d 587 (1981).
N.M.—Cueto v. Stahmann Farms, Inc., 94 N.M. 223, 1980-NMCA-036, 608 P.2d 535 (Ct. App. 1980).
N.D.—Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195 (N.D. 1994).
Children and relatives of farm employer
Iowa—Ross v. Ross, 308 N.W.2d 50 (Iowa 1981).

13 Minn.—Alcozer v. North Country Food Bank, 635 N.W.2d 695 (Minn. 2001).

14 N.J.—De Monaco v. Renton, 18 N.J. 352, 113 A.2d 782 (1955).

15 Okla.—Garr v. Collins, 1953 OK 46, 208 Okla. 113, 253 P.2d 838 (1953).

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16C C.J.S. Constitutional Law § 1578

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1578. Nature and circumstances of disability

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

Courts have generally upheld, in the face of equal protection challenges, provisions of workers' compensation acts specifying what injuries are compensable.

The courts have upheld, as against a contention that equal protection was denied, statutory provisions or judicial decisions governing the injuries for which workers' compensation may be received[1] and the causes, circumstances, or conditions of the injury.[2]

Different treatment of single-event and cumulative injuries, for statute of limitation purposes, is rationally related to legitimate state interests.[3] While a state may validly deny relief to a claimant who does not manifest a disability from an occupational disease within a specified time,[4] or if the permanency of the disability is not determined within a specified time from the date of the injury,[5] a provision classifying the right to compensation for a disease on the basis of the time during which the employee was exposed to the cause of the disease, such as silica dust, violates equal protection.[6]

The application of the last employer doctrine, by assessing full disability liability for an occupational disease against the last employer, has been upheld.[7]

Footnotes

1 **Joint injuries to different fingers**
Ohio—State ex rel. Riter v. Indus. Comm., 91 Ohio St. 3d 89, 2001-Ohio-290, 742 N.E.2d 615 (2001).
Suicide exclusion
Minn.—Schwartz v. Talmo, 295 Minn. 356, 205 N.W.2d 318 (1973).
Heart disease
Kan.—Mudd v. Neosho Memorial Regional Medical Center, 275 Kan. 187, 62 P.3d 236 (2003).
Ohio—State ex rel. Miller v. Parma, 94 Ohio St. 3d 402, 2002-Ohio-889, 763 N.E.2d 179 (2002).
Excluding skin as organ
Conn.—Barton v. Ducci Elec. Contractors, Inc., 248 Conn. 793, 730 A.2d 1149 (1999).
Psychological injury unaccompanied by physical
Idaho—Luttrell v. Clearwater County Sheriff's Office, 140 Idaho 581, 97 P.3d 448 (2004).
Mont.—Stratemeyer v. Lincoln County, 259 Mont. 147, 855 P.2d 506 (1993).
Hand injuries
A workers' compensation statute providing that those who suffer injury to two or more digits may recover for the loss of the function of the entire hand while those who suffer an injury only to the thumb may recover only for impairment to the thumb did not deprive a claimant, who had sustained an injury to his thumb, of equal protection.
N.H.—Arsenault v. Abbott Furniture Corp., 122 N.H. 521, 446 A.2d 1174 (1982).

2 Tenn.—Hill v. St. Paul Fire & Marine Ins. Co., 512 S.W.2d 560 (Tenn. 1974).
Premises; specific working hours
Wis.—Marmolejo v. Department of Industry, Labor and Human Relations, 92 Wis. 2d 674, 285 N.W.2d 650 (1979).
Prisoners
A provision that prisoners who are granted probation on the condition that they work at a jail, industrial farm, or a camp, and who are injured while engaged in that work, may recover workers' compensation benefits only if the injury occurred while they are engaged in the suppression of forest, brush, or grass fires has been upheld.
Cal.—Parsons v. Workers' Comp. Appeals Bd., 126 Cal. App. 3d 629, 179 Cal. Rptr. 88 (5th Dist. 1981).

3 Okla.—McDonald v. Time-DC, Inc., 1989 OK 76, 773 P.2d 1252 (Okla. 1989).

4 Iowa—Meyer v. Iowa State Penitentiary, 476 N.W.2d 58 (Iowa 1991).
Exposure to silica dust
Minn.—Graber v. Peter Lametti Const. Co., 293 Minn. 24, 197 N.W.2d 443 (1972).

5 Mich.—Johnson v. Harnischfeger Corp., 414 Mich. 102, 323 N.W.2d 912 (1982).

6 Colo.—Stevenson v. Industrial Commission, 190 Colo. 234, 545 P.2d 712 (1976).

7 Colo.—Union Carbide Corp. v. Industrial Commission, 196 Colo. 56, 581 P.2d 734 (1978).

16C C.J.S. Constitutional Law § 1579

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Constitutional Law
Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1579. Benefits

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

The rational basis standard applies in challenges to provisions governing workers' compensation benefits.

The receipt of workers' compensation benefits is not a fundamental right for purposes of an equal protection claim,[1] and the rational basis test[2] applies.[3] A liberal construction by an administrative board of a workers' compensation act in favor of a claimant does not deny an employer equal protection.[4]

Various statutory provisions relating to the amount or computation of benefits have been considered consistent with equal protection, such as those used to determine the worker's prior weekly earnings,[5] as well as statutes placing a limitation on benefits for certain diseases,[6] requiring the consideration of the combined effect of several accidents,[7] or allowing a supplemental allowance of compensation, including a cost-of-living increase.[8] Temporary and permanent total disability benefits for occupational diseases may be allowed while denying permanent partial disability benefits for those diseases.[9]

Distinctions in home care benefits may be based on whether the care was given by a family member.[10] However, differences in benefits under a worker injury act and an occupational disease act violate equal protection where there is no rational relationship to the government interest of providing a benefit having a reasonable relationship to actual wages lost as a result of a work-related injury or disease.[11]

Equal protection is not denied by statutes reducing the amount of workers' compensation benefits, or changing the form of the benefits, such as upon the remarriage of a worker's surviving spouse[12] or upon the receipt of a state disability pension by a state employee.[13] Equal protection is also not violated by a statutory offset of Social Security death benefits against workers' compensation benefits payable to particular dependents.[14] While some state constitutional equal protection provisions were violated by an offset for Social Security old age benefits, which discriminated against workers 62 years of age or older,[15] it was elsewhere held that a provision reducing or terminating compensation benefits once workers reached the age for receiving federal old age benefits does not violate equal protection since that provision is rationally related to the purpose of reducing the cost of the program,[16] and it is rational to apply the offset against compensation benefits of unlimited duration.[17]

The rational basis test applies to determinations whether statutes that treat lump-sum workers' compensation settlements in a separate manner violate equal protection.[18] While a statute providing that the payment of compensation in a lump-sum settlement extinguishes all claims for compensation for death does not violate equal protection, since the statute bears a rational relationship to a legitimate governmental interest of promoting the settlement of contested claims,[19] a lump-sum award denies the employer equal protection where an interested minor is not bound by the award.[20]

A provision that denies the claim of an injured employee who has engaged in misconduct, but containing no similar provision against the employer, has been upheld.[21]

CUMULATIVE SUPPLEMENT

Cases:

Defendant did not waive challenge to admissibility of breath alcohol test results in trial for driving while intoxicated (DWI), which objection was based on claim that breath test operator did not comply with mandatory requirement that operator remain in presence of motorist at least 15 minutes before test to ensure that motorist did not place any substance into his or her mouth, by defense counsel's discussion of breath alcohol test results during cross-examination of technical supervisor, where defendant's cross-examination attempted to rebut, explain, or undermine supervisor's previous testimony about test results. 37 Tex. Admin. Code § 19.4(c)(1). Serrano v. State, 464 S.W.3d 1 (Tex. App. Houston 1st Dist. 2015), reh'g overruled, (Mar. 12, 2015) and petition for discretionary review refused, (Aug. 26, 2015).

[END OF SUPPLEMENT]

Footnotes

1 Colo.—Snook v. Joyce Homes, Inc., 215 P.3d 1210 (Colo. App. 2009).
Ky.—Copley v. Pike Elec., 2009 WL 1037565 (Ky. Ct. App. 2009).
Mont.—Satterlee v. Lumberman's Mut. Cas. Co., 2009 MT 368, 353 Mont. 265, 222 P.3d 566 (2009).

2 § 1279.

3 Colo.—Dillard v. Industrial Claim Appeals Office of State of Colo., 134 P.3d 407 (Colo. 2006).

Idaho—Luttrell v. Clearwater County Sheriff's Office, 140 Idaho 581, 97 P.3d 448 (2004).
Ky.—Copley v. Pike Elec., 2009 WL 1037565 (Ky. Ct. App. 2009).
Mont.—Satterlee v. Lumberman's Mut. Cas. Co., 2009 MT 368, 353 Mont. 265, 222 P.3d 566 (2009).
N.H.—Petition of Abbott, 139 N.H. 412, 653 A.2d 1113 (1995).

4 Ky.—Cowden Mfg. Co. v. Fultz, 472 S.W.2d 679 (Ky. 1971).

5 Alaska—Dougan v. Aurora Elec. Inc., 50 P.3d 789 (Alaska 2002).
Conn.—Donahue v. Town of Southington, 259 Conn. 783, 792 A.2d 76 (2002).
Ohio—State ex rel. Thompson v. Ohio Edison Co., 85 Ohio St. 3d 290, 1999-Ohio-266, 707 N.E.2d 940 (1999).

6 **Silicosis**
Ga.—Harrison v. Southern Talc Co., 245 Ga. 212, 264 S.E.2d 2 (1980).
Recurrent hernia
Ark.—Smith v. Riceland Food, 261 Ark. 10, 545 S.W.2d 604 (1977).

7 Ark.—Corbitt v. Mohawk Rubber Co., 256 Ark. 932, 511 S.W.2d 184 (1974).
Ill.—Moreland v. Industrial Commission, 47 Ill. 2d 273, 265 N.E.2d 161 (1970).

8 Md.—Cooper v. Wicomico County, Dept. of Public Works, 278 Md. 596, 366 A.2d 55 (1976).
Restriction to state residents
U.S.—Fisher v. Reiser, 610 F.2d 629 (9th Cir. 1979).

9 Nev.—Holt v. Nevada Indus. Commission, 94 Nev. 257, 578 P.2d 752 (1978).

10 Mont.—Powell v. State Compensation Ins. Fund, 2000 MT 321, 302 Mont. 518, 15 P.3d 877 (2000).

11 Mont.—Stavenjord v. Montana State Fund, 2003 MT 67, 314 Mont. 466, 67 P.3d 229 (2003).

12 Utah—Kohler v. Industrial Commission, 555 P.2d 293 (Utah 1976).

13 Md.—Mazor v. State Dept. of Correction, 279 Md. 355, 369 A.2d 82 (1977).

14 Kan.—Estate of Baker, 222 Kan. 127, 563 P.2d 431 (1977).
Mont.—McClanathan v. Smith, 186 Mont. 56, 606 P.2d 507 (1980).

15 La.—Pierce v. Lafourche Parish Council, 762 So. 2d 608 (La. 2000).
Mont.—Reesor v. Montana State Fund, 2004 MT 370, 325 Mont. 1, 103 P.3d 1019 (2004).

16 Colo.—Culver v. Ace Elec., 971 P.2d 641 (Colo. 1999).
Ky.—McDowell v. Jackson Energy RECC, 84 S.W.3d 71 (Ky. 2002).
W. Va.—State ex rel. Beirne v. Smith, 214 W. Va. 771, 591 S.E.2d 329 (2003).

17 Conn.—Rayhall v. Akim Co., Inc., 263 Conn. 328, 819 A.2d 803 (2003).

18 Kan.—Peterson v. Garvey Elevators, Inc., 252 Kan. 976, 850 P.2d 893 (1993).

19 Ill.—Segers v. Industrial Com'n, 191 Ill. 2d 421, 247 Ill. Dec. 433, 732 N.E.2d 488 (2000).

20 Ill.—Swift & Co. v. Industrial Commission, 381 Ill. 77, 44 N.E.2d 842 (1942).

21 Ind.—Cunningham v. Aluminum Co. of America, Inc., 417 N.E.2d 1186 (Ind. Ct. App. 1981).

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16C C.J.S. Constitutional Law § 1580

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Constitutional Law
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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1580. Benefits—Family members eligible to recover

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

Rational classifications of the dependents entitled to recover benefits for a worker's death have been upheld but not provisions that discriminate again illegitimate children or aliens.

A distinction in a workers' compensation statute providing death benefits only to relatives who were actually dependent on the worker's wages may be rationally related to the legitimate purpose of compensating those who are financially harmed and thus does not offend equal protection.[1] It is also not a violation of equal protection to allow stepchildren, who are not legally dependent on the worker, to recover death benefits under a workers' compensation act.[2]

Equal protection is denied by a statutory provision that precludes illegitimate children from receiving benefits under a workers' compensation law[3] or denies equal recovery rights to dependent unacknowledged illegitimate children[4] or grandchildren.[5] However, a statute limiting death benefits to members of the worker's family at the time of the disability and to after-born children of the marriage existing when disability began survived heightened scrutiny, even assuming that it discriminated on the basis of illegitimacy, since it was substantially related to the legitimate state interests of compensating the worker's family

as it existed on the date of the compensable event, plus after-born children of that marriage, and of reducing the overall cost of maintaining the compensation system.[6]

Statutes limiting death benefits to nonresident alien beneficiaries of a deceased worker, who are also not residents of Canada, violate equal protection.[7]

Equal protection is denied by a provision that permits the recovery of death benefits only by one who is the survivor of a ceremonial marriage where the worker and survivor had entered into a common-law marriage recognized by another state in which it was consummated.[8]

Footnotes

1 Mo.—Etling v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771 (Mo. 2003).

2 N.C.—Winstead v. Derreberry, 73 N.C. App. 35, 326 S.E.2d 66 (1985).

3 Wyo.—Heather v. Delta Drilling Co., 533 P.2d 1211 (Wyo. 1975).
As to the equal protection rights of illegitimate children, generally, see § 1585.

4 U.S.—Weber v. Aetna Cas. & Sur. Co., 406 U.S. 164, 92 S. Ct. 1400, 31 L. Ed. 2d 768 (1972).
N.Y.—Claim of Burns, 55 N.Y.2d 501, 450 N.Y.S.2d 173, 435 N.E.2d 390 (1982).
As to presumptions regarding dependency discriminating against illegitimate children, see § 1585.

5 N.J.—Carr v. Campbell Soup Co., 124 N.J. Super. 382, 307 A.2d 126 (App. Div. 1973).

6 Ky.—Steven Lee Enterprises v. Varney, 36 S.W.3d 391 (Ky. 2000).

7 Fla.—De Ayala v. Florida Farm Bureau Cas. Ins. Co., 543 So. 2d 204 (Fla. 1989).
Kan.—Vietti v. George K. Mackie Fuel Co., 109 Kan. 179, 197 P. 881 (1921).

8 Wyo.—Bowers v. Wyoming State Treasurer ex rel. Workmen's Compensation Division, 593 P.2d 182 (Wyo. 1979).

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16C C.J.S. Constitutional Law § 1581

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1581. Claim proceedings

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

The courts have upheld, against equal protection challenges, statutes governing proceedings to secure workers' compensation benefits, such as those pertaining to the time for filing claims, as well as certain presumptions.

Statutes pertaining to the proceedings to secure workers' compensation benefits that have a rational basis do not violate the Equal Protection Clause.[1]

An equal protection challenge to the exclusive jurisdiction of a commission to determine certain issues connected with a workers' compensation case is determined in accordance with the rational relationship standard.[2] Equal protection is violated by statutes limiting the jurisdiction of a workers' compensation agency to specific types of death claims where there is no showing that the jurisdictional prerequisites were rationally related to some state objective at least as important as that of compensating dependents of deceased workers.[3]

Courts have upheld statutory provisions that impose reasonable rules of procedure,[4] regulate or limit the time for filing claims for benefits,[5] prescribe a time limit for requesting a hearing,[6] or require proof of loss of earning capacity for nonscheduled injuries although not making any similar requirement for scheduled ones.[7]

A provision requiring an applicant to appear in person at the hearing unless the employee's absence is excused by the hearing officer is constitutional despite the fact that it requires the attendance of the employee but not of the employer.[8]

Equal protection is not violated by a presumption that a disease was caused by employment, under certain circumstances,[9] and that such a condition is presumed compensable[10] and results in total occupational disability.[11] Conversely, a workers' compensation statute removing the presumption of compensability for mental injuries has also been upheld.[12] A workers' compensation statute which creates an irrebuttable presumption that a volunteer firefighter injured in the line of duty is entitled to wages at least equal to the statewide average weekly wage does not violate equal protection.[13] Conclusive presumptions of dependency have also been upheld,[14] but a workers' compensation statute requiring that illegitimate children seeking benefits prove actual dependency, while granting legitimate children a conclusive presumption of dependency, violated equal protection.[15]

The fact that, on prior occasions, a commission awarded a greater loss to similar claimants did not amount to a pattern of discriminatory treatment that violated a subsequent claimant's right to equal protection since the commission does not need to perpetuate a mistake to avoid an equal protection challenge.[16]

The courts have upheld provisions that require that employers or workers' compensation carriers pay the reasonable litigation costs, including attorney's fees, of successful claimants.[17] Limits on the amount of fees that the claimant's attorney may recover have also been sustained when challenged on equal protection grounds.[18]

CUMULATIVE SUPPLEMENT

Cases:

Statute allowing a workers' compensation claimant to dismiss an employer-initiated appeal of an Industrial Commission's determination only with the consent of the employer did not violate equal protection, despite fact that, pursuant to the statute, the claimant was the plaintiff in the common pleas court and that plaintiffs in other types of civil cases had the ability to voluntarily dismiss their complaints without permission; classification under the statute advanced legitimate state interests in limiting improper payments made during the pendency of appeals and in avoiding unnecessary delay in the appeal process, and the classification vis-';a -vis other civil plaintiffs was especially reasonable given the differences between the workers' compensation system and the civil-justice system. U.S. Const. Amend. 14; Ohio Const. art. 1, § 2; Ohio Rev. Code Ann. § 4123.512(D); Ohio Civ. R. 41(A)(1)(a). Ferguson v. State, 151 Ohio St. 3d 265, 2017-Ohio-7844, 87 N.E.3d 1250 (2017).

[END OF SUPPLEMENT]

Footnotes

1 Cal.—Alaska Packers' Ass'n v. Industrial Accident Commissionof California, 1 Cal. 2d 250, 34 P.2d 716 (1934), aff'd, 294 U.S. 532, 55 S. Ct. 518, 79 L. Ed. 1044 (1935).

Ohio—Copperweld Steel Co. v. Industrial Commission, 143 Ohio St. 591, 28 Ohio Op. 491, 56 N.E.2d 154 (1944).
Okla.—Robinson v. State, 1925 OK 1026, 116 Okla. 131, 244 P. 44 (1925).
Or.—Sevich v. State Indus. Acc. Commission, 142 Or. 563, 20 P.2d 1085 (1933).
Pa.—Mathies Coal Co. v. Workmen's Compensation Appeal Bd., 40 Pa. Commw. 120, 399 A.2d 790 (1979).
S.C.—Bannister v. Shepherd, 191 S.C. 165, 4 S.E.2d 7 (1939).

2 Mo.—Goodrum v. Asplundh Tree Expert Co., 824 S.W.2d 6 (Mo. 1992).

Accident or intentional act

Equal protection is not violated by granting a commission exclusive jurisdiction to determine whether a claimant's injuries were the product of an accident or intentional act, rather than allowing a court to hear the issue, since granting exclusive jurisdiction is tailored to the orderly and efficient administration of the compensation system.

Mo.—Goodrum v. Asplundh Tree Expert Co., 824 S.W.2d 6 (Mo. 1992).

3 Ohio—Kinney v. Kaiser-Aluminum & Chemical Corp., 41 Ohio St. 2d 120, 70 Ohio Op. 2d 206, 322 N.E.2d 880 (1975).

4 La.—Sawyer v. Weber-King Mfg. Co., 193 So. 369 (La. Ct. App. 1st Cir. 1940).

5 Ala.—Larry v. Taylor, 227 Ala. 90, 149 So. 104 (1933).
Ill.—Otis Elevator Co. v. Industrial Commission, 288 Ill. 396, 123 N.E. 600 (1919).
Iowa—Sawyer v. National Transp. Co., 448 N.W.2d 306 (Iowa 1989).

6 Alaska—Bailey v. Texas Instruments, Inc., 111 P.3d 321 (Alaska 2005).

7 Colo.—Matthews v. Industrial Commission, 627 P.2d 1123 (Colo. App. 1980).

8 Ariz.—Lindsay v. Industrial Commission of Arizona, 115 Ariz. 254, 564 P.2d 943 (Ct. App. Div. 1, 1977).

9 La.—Saling v. City of New Orleans, 398 So. 2d 1205 (La. Ct. App. 4th Cir. 1981), writ denied, 401 So. 2d 986 (La. 1981).

10 Md.—Board of County Com'rs for Prince George's County v. Colgan, 274 Md. 193, 334 A.2d 89 (1975).

11 **Pneumoconiosis; irrebuttable presumption**

Ky.—Kentucky Harlan Coal Co. v. Holmes, 872 S.W.2d 446 (Ky. 1994).

12 Alaska—Williams v. State, Dept. of Revenue, 895 P.2d 99 (Alaska 1995).

13 Pa.—Ballerino v. W.C.A.B. (Darby Borough), 938 A.2d 541 (Pa. Commw. Ct. 2007).

14 **Spouse, if living with worker**

Mich.—McDonald v. Chrysler Corp., 68 Mich. App. 468, 242 N.W.2d 810 (1976).

Children

La.—Fidelity & Cas. Co. of New York v. Masters, 335 So. 2d 722 (La. Ct. App. 2d Cir. 1976), writ denied, 338 So. 2d 297 (La. 1976).

Stepchildren

Ga.—Flint River Mills v. Henry, 239 Ga. 347, 236 S.E.2d 583 (1977).

15 Neb.—Findaya W., By and Through Theresa W. v. A-T.E.A.M. Co., Inc., 249 Neb. 838, 546 N.W.2d 61 (1996).

16 Ohio—State ex rel. Meissner v. Indus. Comm., 94 Ohio St. 3d 203, 2002-Ohio-477, 761 N.E.2d 618 (2002).

17 Mont.—McMillen v. Arthur G. McKee & Co., 166 Mont. 400, 533 P.2d 1095 (1975).
Pa.—J. R. Sales, Inc. v. Workmen's Compensation Appeal Bd., 33 Pa. Commw. 115, 381 A.2d 212 (1977).
Vt.—Hodgeman v. Jard Co., 157 Vt. 461, 599 A.2d 1371 (1991).
Wash.—Seattle School Dist. No. 1 v. Department of Labor and Industries of State of Wash., 116 Wash. 2d 352, 804 P.2d 621, 65 Ed. Law Rep. 578 (1991).

18 Fla.—Lundy v. Four Seasons Ocean Grand Palm Beach, 932 So. 2d 506 (Fla. 1st DCA 2006) (disapproved of on other grounds by, Murray v. Mariner Health, 994 So. 2d 1051 (Fla. 2008)).
Idaho—Rhodes v. Industrial Com'n, 125 Idaho 139, 868 P.2d 467 (1993).
Me.—Ayotte v. United Services, Inc., 567 A.2d 430 (Me. 1989).
Mont.—Burris v. Employment Relations Div./Dept. of Labor & Industry, 252 Mont. 376, 829 P.2d 639 (1992).
Tex.—Texas Workers' Compensation Com'n v. Garcia, 893 S.W.2d 504 (Tex. 1995).
Va.—Hudock v. Virginia State Bar, 233 Va. 390, 355 S.E.2d 601 (1987).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

M. Creation, Discharge, or Alteration of Liability

2. Liability for Personal Injuries

c. Workers' Compensation Acts

§ 1582. Contribution or subrogation

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 3603

Provisions barring third-party suits against employers or granting employers subrogation rights against third parties have usually been upheld although some statutes concerned with subrogation or settlements by the employee have been found unconstitutional on equal protection grounds.

Generally, a provision barring a third party found liable for an employee's injuries from suing the employer or seeking contribution is consistent with equal protection[1] although there is also authority to the contrary.[2] A provision immunizing an employer from third-party liability if it is required to assure that its statutory employees have workers' compensation coverage has been upheld since the purpose of the provision was to prevent an employer from avoiding liability by subcontracting, and in exchange for assuming that liability, the employer received immunity from third-party tort liability.[3]

Given the State's legitimate state concerns with respect to the prevention of double recovery,[4] and the minimization of losses to the workers' compensation fund caused by acts of third-party tortfeasors,[5] a statute may, consistent with equal protection, permit

the reimbursement of compensation paid by insurance carriers from the amount recovered by the worker from a third party[6] and award an employer, subrogated to the right of the employee, reasonable attorney's fees spent securing recovery against a third person.[7] A distinction may be made between generally allowing subrogation of a claim against a third party whose acts caused the injury and denying subrogation of a malpractice claim against a doctor whose negligence generally aggravated the injury.[8] On the other hand, courts have found unconstitutional statutes that, in effect, require subrogation without allowing the employee to show that the tort recovery did not duplicate the workers' compensation award,[9] treat settlements and judgments in the tort action against the third party differently,[10] prohibit an employee from settling a claim against a third-party tortfeasor without the employer's consent,[11] or invalidate a settlement reached between an employee and a third-party tortfeasor for failure to give notice of it to the employer.[12]

A statutory provision for a subrogation lien in favor of an employer against the recovery of an employee from a third party has been upheld.[13] It is not a denial of equal protection to deny an employer the right to claim a lien where an action by the employee against a third party results in a settlement while allowing such a lien on a judgment.[14] However, a statute was invalid that transferred to the employer the employee's common-law action for damages against a third person tortfeasor, where that third person was also subject to the workers compensation act, but gave the employer a lien on that right of action where the third person was not subject to the act, since the right to a full remedy against the third party depended on the fortuitous circumstance of whether the third party was also subject to the workers' compensation act (the transferred cause of action being subject to statute of limitations and other problems), and the fact that the tortfeasor may be an employer who is required to pay compensation to its own employees does not justify exempting the tortfeasor from liability for injuries inflicted upon other persons with whom it has no contractual or other relationship.[15]

Footnotes

1 Colo.—Williams v. White Mountain Const. Co., Inc., 749 P.2d 423 (Colo. 1988).
Ga.—Georgia Dept. of Human Resources v. Joseph Campbell Co., 261 Ga. 822, 411 S.E.2d 871 (1992).
Iowa—Iowa Power & Light Co. v. Abild Const. Co., 259 Iowa 314, 144 N.W.2d 303 (1966).
R.I.—Boucher v. McGovern, 639 A.2d 1369 (R.I. 1994).

2 Fla.—Sunspan Engineering & Const. Co. v. Spring-Lock Scaffolding Co., 310 So. 2d 4 (Fla. 1975).

3 Idaho—Venters v. Sorrento Delaware, Inc., 141 Idaho 245, 108 P.3d 392 (2005).

4 Ohio—McKinley v. Ohio Bur. of Workers' Comp., 170 Ohio App. 3d 161, 2006-Ohio-5271, 866 N.E.2d 527 (4th Dist. Washington County 2006), judgment aff'd, 117 Ohio St. 3d 538, 2008-Ohio-1736, 885 N.E.2d 242 (2008).

5 Ohio—Fry v. Surf City, Inc., 137 Ohio Misc. 2d 6, 2006-Ohio-3092, 851 N.E.2d 573 (C.P. 2006).

6 Alaska—McCarter v. Alaska Nat. Ins. Co., 883 P.2d 986 (Alaska 1994).
Mich.—Treadeau v. Wausau Area Contractors, Inc., 112 Mich. App. 130, 316 N.W.2d 231 (1982).
Ohio—Bush v. Senter, 141 Ohio Misc. 2d 1, 2006-Ohio-7155, 866 N.E.2d 1152 (C.P. 2006).
Rational basis test
No fundamental right or suspect class is involved in a statute governing subrogation interests in a workers' compensation claimant's recovery against a third party, and therefore, an equal protection challenge to the subrogation statutes is reviewed under the rational-basis test.
Ohio—Groch v. Gen. Motors Corp., 117 Ohio St. 3d 192, 2008-Ohio-546, 883 N.E.2d 377 (2008).

7 Minn.—Thornton Bros. Co. v. Northern States Power Co., 151 Minn. 435, 186 N.W. 863 (1922).

8 Wis.—Racine Steel Castings, Div. of Evans Products Co. v. Hardy, 144 Wis. 2d 553, 426 N.W.2d 33 (1988).

9 Ohio—Modzelewski v. Yellow Freight Sys., Inc., 102 Ohio St. 3d 192, 2004-Ohio-2365, 808 N.E.2d 381 (2004).

10 Ohio—Holeton v. Crouse Cartage Co., 92 Ohio St. 3d 115, 2001-Ohio-109, 748 N.E.2d 1111 (2001).

11 Cal.—Cilibrasi v. Reiter, 103 Cal. App. 2d 397, 229 P.2d 394 (2d Dist. 1951).

12 Minn.—Nelson v. State, Dept. of Natural Resources, 305 N.W.2d 317 (Minn. 1981).

13 Tenn.—Dobbins v. Terrazzo Mach. & Supply Co., 479 S.W.2d 806 (Tenn. 1972).

14 Cal.—Van Nuis v. Los Angeles Soap Co., 36 Cal. App. 3d 222, 111 Cal. Rptr. 398 (2d Dist. 1973).

15 Ill.—Grasse v. Dealer's Transport Co., 412 Ill. 179, 106 N.E.2d 124 (1952).

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PART VI. Privileges and Immunities; Equal Protection

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N. Family Relationships

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Research References

A.L.R. Library

A.L.R. Index, Adoption of Children
A.L.R. Index, Children and Minors
A.L.R. Index, Constitutional Law
A.L.R. Index, Divorce and Separation
A.L.R. Index, Equal Protection
A.L.R. Index, Legitimacy of Children
A.L.R. Index, Marriage
A.L.R. Index, Neglect of Child
West's A.L.R. Digest, Constitutional Law 3103, 3165, 3180 to 3195, 3200 to 3206, 3225, 3241, 3335, 3375, 3408 to 3412, 3439, 3735 to 3742, 3765, 3767

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PART VI. Privileges and Immunities; Equal Protection

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§ 1583. Generally; marriage and divorce

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 3103, 3165, 3180 to 3195, 3200 to 3206, 3225, 3241, 3335, 3375, 3408 to 3412, 3439, 3735 to 3742, 3765, 3767

The Equal Protection Clause protects various rights associated with the family relationship, and laws dealing with marriage are generally subject to rational basis review.

Choices about marriage, family life, and raising children are among the associational rights of basic importance protected by the Fourteenth Amendment.[1] While marriage is a fundamental right,[2] not all state regulations impeding marriage are invalid under the Equal Protection Clause,[3] and statutes and regulatory schemes that do not significantly interfere with the right to enter into marriage are subject to rational basis review.[4]

Unmarried persons may be treated differently than married persons without violating equal protection[5] if the legislation survives the rational relationship test[6] unless it infringes on a fundamental right, such as the right to privacy.[7]

Equal protection is denied by a statute prohibiting the marriage of siblings related by adoption since sexual intercourse among adopted siblings is not incest, and the restriction does not further a legitimate state interest in family harmony.[8] A statute that requires judicial approval for the marriage of a person having a child, which is not in his custody, that he is under an obligation

to support, which does not expressly provide for or require counseling or automatically granting permission to marry, violates the Equal Protection Clause since the infringement of the fundamental right to marry could not be justified by the claimed interest of furnishing an opportunity to counsel the applicant as to the necessity of fulfilling his prior support obligations and protecting the children's welfare.[9]

Requiring divorcing parents to attend classes on helping children cope with divorce does not violate equal protection, in view of the State's strong interest in protecting minor children.[10] While a statute requiring that a public teacher's retirement benefits be treated as nonmarital property in a marriage dissolution proceeding was sufficiently tailored to carry out a state's goal of providing a retirement to persons not covered by Social Security,[11] there also was a rational basis for a statutory determination that pension rights acquired during marriage should be treated as marital property even if one of the parties was not eligible for Social Security benefits.[12]

A statute that limits dower rights by requiring the surviving spouse to be married for more than one year bears a rational relationship to governmental interests of discouraging deathbed marriages and protecting the decedent's assets.[13]

Where a litigant does not challenge the validity of a legislative classification but, rather, claims that a court has violated the Equal Protection Clause in a particular divorce case by discriminating on the basis of sex, the litigant must make an unambiguous showing that the trial court's decision was grounded in invidious discrimination on the basis of sex.[14]

CUMULATIVE SUPPLEMENT

Cases:

Distinctions based on marital status are subject to the same heightened scrutiny, in an equal protection challenge, as distinctions based on gender. U.S. Const. Amend. 5. Tineo v. Attorney General United States of America, 937 F.3d 200 (3d Cir. 2019).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—M.L.B. v. S.L.J., 519 U.S. 102, 117 S. Ct. 555, 136 L. Ed. 2d 473 (1996); Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014), cert. denied, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014) and cert. denied, 135 S. Ct. 308, 190 L. Ed. 2d 140 (2014) and cert. denied, 135 S. Ct. 314, 190 L. Ed. 2d 140 (2014).

2 U.S.—Bostic v. Schaefer, 760 F.3d 352 (4th Cir. 2014), cert. denied, 135 S. Ct. 286, 190 L. Ed. 2d 140 (2014) and cert. denied, 135 S. Ct. 308, 190 L. Ed. 2d 140 (2014) and cert. denied, 135 S. Ct. 314, 190 L. Ed. 2d 140 (2014); Brenner v. Scott, 999 F. Supp. 2d 1278 (N.D. Fla. 2014).

3 Ill.—Jacobsen v. King, 2012 IL App (2d) 110721, 361 Ill. Dec. 518, 971 N.E.2d 620 (App. Ct. 2d Dist. 2012).
La.—Durham v. Louisiana State Racing Com'n, 458 So. 2d 1292 (La. 1984).
Ohio—Rue v. Rue, 169 Ohio App. 3d 160, 2006-Ohio-5131, 862 N.E.2d 166 (2d Dist. Greene County 2006).

4 Ky.—Weiand v. Board of Trustees of Kentucky Retirement Systems, 25 S.W.3d 88 (Ky. 2000).

5 Ill.—In re Marriage of Thornqvist, 79 Ill. App. 3d 791, 35 Ill. Dec. 342, 399 N.E.2d 176 (1st Dist. 1979).
Or.—Matter of Lacey, 34 Or. App. 877, 580 P.2d 1032 (1978).

6 Wash.—Davis v. Employment Sec. Dept., 108 Wash. 2d 272, 737 P.2d 1262 (1987).

7 **Contraception**
A statute permitting married persons to obtain contraceptives to prevent pregnancy, but prohibiting their distribution to single persons for that purpose, violates equal protection.

U.S.—Eisenstadt v. Baird, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972).
As to right of privacy, generally, see §§ 1164 to 1203.

8 Colo.—Israel v. Allen, 195 Colo. 263, 577 P.2d 762 (1978).

9 U.S.—Zablocki v. Redhail, 434 U.S. 374, 98 S. Ct. 673, 54 L. Ed. 2d 618, 24 Fed. R. Serv. 2d 1313 (1978).

10 Okla.—Nelson v. Nelson, 1998 OK 10, 954 P.2d 1219 (Okla. 1998).
As to child support, see § 1559.

11 Mo.—Silcox v. Silcox, 6 S.W.3d 899 (Mo. 1999).

12 Ark.—Skelton v. Skelton, 339 Ark. 227, 5 S.W.3d 2 (1999).

13 Ark.—Matter of Estate of Epperson, 284 Ark. 35, 679 S.W.2d 792, 48 A.L.R.4th 965 (1984).

14 Va.—Wiencko v. Takayama, 62 Va. App. 217, 745 S.E.2d 168 (2013).

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§ 1584. Parent-child relationship

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Laws governing the parent-child relationship are subject to equal protection requirements, but various distinctions are supported by the State's important interest in the child's welfare.

The parent-child relationship[1] and the rights of parents to the care, custody, and upbringing of their children[2] are subject to protection under the Equal Protection Clause because they constitute a fundamental liberty interest.[3] For the purpose of equal protection analysis, a state also has important interest in protecting the needs and interests of children of both wed and unwed parents.[4] For instance, the application of a parenting coordination statute only to divorcing parents has a reasonable relationship to a legitimate state interest in serving the child's best interests in having both parents participate in raising the child.[5] Consideration of the husband's age in awarding sole custody of their child to his wife in divorce proceedings did not violate equal protection where a statute did not call for different treatment of older parents, and in any event, age was not a suspect class, and while custody of one's child could be deemed a fundamental right, warranting strict scrutiny, the government has the highest interest in the child's best interests.[6]

Noncustodial parents versus custodial parents did not constitute a suspect class, and thus no suspect class triggered strict scrutiny analysis of equal protection challenge to validity of state's child support guidelines.[7]

Judicial determinations as to child support do not violate equal protection where there is a rational basis to support any disparate treatment of the parties.[8]

Grandparent visitation statutes are subject to rational basis review on an equal protection challenge brought by the grandparents,[9] and have generally been upheld on this basis,[10] even though they make distinctions based on whether the parents were living apart,[11] or the children were legitimate.[12]

A grandparent visitation statute, which allows grandparents visitation after the death of a child's parent, does not unfairly treat the surviving parent's family differently from a traditional intact family so as to violate constitutional right to equal protection and serves the child's best interests by allowing a sense of continuity with his previous meaningful relationship with the grandparents.[13]

Assisted conception.

An assisted conception statute which made distinctions based on marital status, in that a male donor was afforded rights as a parent only if he was married to the gestational mother, does not violate equal protection because statute's objective of protecting married couples from potential interference by donors is rationally related to that legitimate governmental purpose.[14]

A distinction between a husband and wife with regard to full parental rights with regard to a child born to a surrogate mother does not violate equal protection where the wife's egg had not been implanted in the surrogate mother even if a different presumption exists with regard to the rights of the husband in the case of a sperm donor.[15]

Differentiation between heterosexual and same-sex couples.

A statutory differentiation between heterosexual and same-sex couples with respect to the requirement that a donor of biological material relinquish parental rights, permitting only members of heterosexual "commissioning couples" to retain such rights, lacked a rational basis, and violated equal protection provisions of state and federal constitutions, as applied to prevent biological mother who donated egg to be carried to term by her same-sex partner from qualifying to retain her parental rights as member of "commissioning couple."[16] For purposes of equal protection analysis, while the State has an interest in ensuring that the parental rights of children conceived through the use of assisted reproductive technology are defined by law, in making sure children have parents to care for them, and in preventing litigation that disrupts families,[17] the State does not have a legitimate interest in precluding same-sex couples from being given the same opportunity as heterosexual couples to demonstrate the requisite intent to parent a child as required for retention of parental rights by a donor of biological material under the assisted reproductive technology statute.[18] A same-sex couple must therefore be afforded the equivalent chance as a heterosexual couple to establish their intentions in using assisted reproductive technology to conceive a child.[19]

Footnotes

1 Ala.—Herring v. State, 100 So. 3d 616 (Ala. Crim. App. 2011).
Colo.—People in Interest of E. A., 638 P.2d 278 (Colo. 1981).

2 U.S.—Derry v. Marion Community Schools, 790 F. Supp. 2d 839, 272 Ed. Law Rep. 958 (N.D. Ind. 2008).

Ala.—Herring v. State, 100 So. 3d 616 (Ala. Crim. App. 2011).
Colo.—L.L. v. People, 10 P.3d 1271 (Colo. 2000).
Ky.—Maxwell v. Maxwell, 382 S.W.3d 892 (Ky. Ct. App. 2012).
Pa.—C.B. v. J.B., 2013 PA Super 92, 65 A.3d 946 (2013), appeal denied, 620 Pa. 727, 70 A.3d 808 (2013).

Race

Constitutional requirements of equal protection prohibit courts from relying on race to make decisions regarding child custody.
Mont.—In re Marriage of Olson, 2008 MT 232, 344 Mont. 385, 194 P.3d 619 (2008).

Allowing grandparent visitation

Pa.—Schmehl v. Wegelin, 592 Pa. 581, 927 A.2d 183 (2007).

3 U.S.—Derry v. Marion Community Schools, 790 F. Supp. 2d 839, 272 Ed. Law Rep. 958 (N.D. Ind. 2008).
Ala.—Herring v. State, 100 So. 3d 616 (Ala. Crim. App. 2011).
Colo.—L.L. v. People, 10 P.3d 1271 (Colo. 2000).
Ill.—In re Adoption of K.L.P., 198 Ill. 2d 448, 261 Ill. Dec. 492, 763 N.E.2d 741 (2002).
Mass.—Blixt v. Blixt, 437 Mass. 649, 774 N.E.2d 1052 (2002).
N.J.—In re T.J.S., 419 N.J. Super. 46, 16 A.3d 386 (App. Div. 2011), judgment aff'd, 212 N.J. 334, 54 A.3d 263 (2012).
Pa.—Schmehl v. Wegelin, 592 Pa. 581, 927 A.2d 183 (2007).

4 Cal.—In re D.M., 210 Cal. App. 4th 541, 148 Cal. Rptr. 3d 349 (6th Dist. 2012), review denied, (Jan. 3, 2013).
Neb.—Friehe v. Schaad, 249 Neb. 825, 545 N.W.2d 740 (1996).

Physical abuse of child

U.S.—Xiong v. Wagner, 700 F.3d 282 (7th Cir. 2012).

5 Okla.—Barnes v. Barnes, 2005 OK 1, 107 P.3d 560 (Okla. 2005).

6 N.C.—Phelps v. Phelps, 337 N.C. 344, 446 S.E.2d 17, 34 A.L.R.5th 751 (1994).

7 S.C.—Row v. Row, 185 N.C. App. 450, 650 S.E.2d 1 (2007).

8 S.C.—McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012).

9 Mich.—Brinkley v. Brinkley, 277 Mich. App. 23, 742 N.W.2d 629 (2007).

10 Ohio—In re Gibson, 61 Ohio St. 3d 168, 573 N.E.2d 1074 (1991).

11 Mass.—Blixt v. Blixt, 437 Mass. 649, 774 N.E.2d 1052 (2002).

12 Ark.—Reed v. Glover, 319 Ark. 16, 889 S.W.2d 729 (1994).

13 Wis.—In re Opichka, 2010 WI App 23, 323 Wis. 2d 510, 780 N.W.2d 159 (Ct. App. 2010).

14 Va.—L.F. v. Breit, 285 Va. 163, 736 S.E.2d 711 (2013).

15 N.J.—Matter of Baby M, 109 N.J. 396, 537 A.2d 1227, 77 A.L.R.4th 1 (1988).

16 Fla.—D.M.T. v. T.M.H., 129 So. 3d 320 (Fla. 2013).

17 Fla.—D.M.T. v. T.M.H., 129 So. 3d 320 (Fla. 2013).

18 Fla.—D.M.T. v. T.M.H., 129 So. 3d 320 (Fla. 2013).

19 Fla.—D.M.T. v. T.M.H., 129 So. 3d 320 (Fla. 2013).

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§ 1585. Illegitimacy

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Unjustified discrimination because of illegitimacy, including with respect to inheritance rights, is prohibited by the Fourteenth Amendment.

The Fourteenth Amendment prohibits unjustified discrimination against illegitimate children,[1] and children are to be treated equally regardless of their legitimacy.[2] A statutory classification based on illegitimacy violates equal protection unless it is substantially related to an important governmental interest[3] or substantially furthers a legitimate state purpose,[4] and at least an intermediate test is applied,[5] even if this classification is not subject to strict scrutiny.[6] Thus, a state may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally; however, a challenged statute that is substantially related to an important state interest should be upheld.[7] Furthermore, equal protection may be denied by a law that conclusively denies to one subclass of nonmarital children benefits that are potentially available to another subclass,[8] such as in the case of wrongful death actions.[9]

In the absence of a substantial relationship to a permissible state interest, an illegitimate child may not be precluded from inheriting from his or her father.[10] When statutes governing inheritance by children born out of wedlock are challenged on

equal protection grounds, it has also been recognized that a state has a substantial, permissible interest in providing for the orderly disposition of property at death.[11] Thus, a statute governing an illegitimate child's inheritance from and through the child's natural father and his kindred, which required paternity to be proved within a restricted period after the putative father's death did not violate the Equal Protection Clause, since the State had a legitimate interest in protecting the family and the estates of the deceased by requiring adjudication of paternity within a reasonable time frame.[12] While a statute providing only that a child born out of wedlock may inherit from the father only if the father marries the mother and acknowledges the child violates equal protection,[13] various statutes dealing with the manner of establishing the child's right to inherit from a putative father have been upheld.[14] However, a statute providing that a will is revoked by the subsequent birth of a legitimate child to the testator was unconstitutional to the extent that it excluded an illegitimate child whose filiation has been established in the manner provided by law.[15]

Footnotes

1 Ark.—Boatman v. Dawkins, 294 Ark. 421, 743 S.W.2d 800 (1988).

2 U.S.—Gomez v. Perez, 409 U.S. 535, 93 S. Ct. 872, 35 L. Ed. 2d 56 (1973).
Mont.—State, Dept. of Revenue v. Wilson, 194 Mont. 530, 634 P.2d 172 (1981).
Neb.—Findaya W., By and Through Theresa W. v. A-T.E.A.M. Co., Inc., 249 Neb. 838, 546 N.W.2d 61 (1996).
As to treatment under workers' compensation laws, see § 1575.

3 Mont.—State of Ariz. v. Sasse, 245 Mont. 340, 801 P.2d 598 (1990).
Neb.—Findaya W., By and Through Theresa W. v. A-T.E.A.M. Co., Inc., 249 Neb. 838, 546 N.W.2d 61 (1996).
Tex.—Dickson v. Simpson, 807 S.W.2d 726 (Tex. 1991).
Va.—Jones v. Robinson, 229 Va. 276, 329 S.E.2d 794 (1985).
Wis.—Le Fevre by Grapentin v. Schrieber, 167 Wis. 2d 733, 482 N.W.2d 904 (1992).

4 La.—Pace v. State Through Louisiana State Employees Retirement System, 648 So. 2d 1302 (La. 1995).

5 U.S.—Pierre v. Holder, 738 F.3d 39 (2d Cir. 2013), petition for certiorari filed, 135 S. Ct. 58, 190 L. Ed. 2d 32 (2014).
Neb.—Findaya W., By and Through Theresa W. v. A-T.E.A.M. Co., Inc., 249 Neb. 838, 546 N.W.2d 61 (1996).
W. Va.—Shelby J.S. v. George L.H., 181 W. Va. 154, 381 S.E.2d 269 (1989).
The intermediate level of scrutiny is discussed in § 1278.

6 La.—Talley v. Succession of Stuckey, 614 So. 2d 55 (La. 1993).
Va.—Jones v. Robinson, 229 Va. 276, 329 S.E.2d 794 (1985).

7 Mich.—Crego v. Coleman, 463 Mich. 248, 615 N.W.2d 218 (2000).

8 Wis.—Le Fevre by Grapentin v. Schrieber, 167 Wis. 2d 733, 482 N.W.2d 904 (1992).

9 § 1573.

10 U.S.—Trimble v. Gordon, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977).

11 La.—Succession of Grice, 462 So. 2d 131 (La. 1985).
Tenn.—Lanier v. Rains, 229 S.W.3d 656 (Tenn. 2007).

12 Miss.—Estate of McCullough v. Yates, 32 So. 3d 403 (Miss. 2010).

13 R.I.—In re Estate of Cherkas, 506 A.2d 1029 (R.I. 1986).

14 U.S.—Lalli v. Lalli, 439 U.S. 259, 99 S. Ct. 518, 58 L. Ed. 2d 503 (1978); Vernoff v. Astrue, 568 F.3d 1102 (9th Cir. 2009).
Ark.—Bell v. McDonald, 2014 Ark. 75, 432 S.W.3d 18 (2014).
Cal.—Estate of Britel, 186 Cal. Rptr. 3d 321 (Cal. App. 4th Dist. 2015).
La.—Sudwischer v. Estate of Hoffpauir, 705 So. 2d 724 (La. 1997).
Miss.—Estate of McCullough v. Yates, 32 So. 3d 403 (Miss. 2010).

Ohio—Brookbank v. Gray, 74 Ohio St. 3d 279, 1996-Ohio-135, 658 N.E.2d 724 (1996).

As to whether time limits for establishing right to inherit violate equal protection, see § 1390.

15 La.—Talley v. Succession of Stuckey, 614 So. 2d 55 (La. 1993).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

N. Family Relationships

§ 1586. Illegitimacy—Determination of paternity and father's rights

Topic Summary | References | Correlation Table

West's Key Number Digest

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While states may impose reasonable parameters on paternity suits, the child's or father's equal protection rights may not be violated.

States have the right to impose reasonable parameters on paternity suits, with regard to such matters as the mother's representation of the child's interests, without violating the child's right to equal protection.[1] An illegitimate child is denied equal protection by a provision limiting the right to bring an action for a determination of paternity and support to the mother.[2] However, it is not a denial of equal protection for a statute to authorize only a putative father of a child born out of wedlock, and not the mother, to institute legitimacy proceedings[3] or to authorize a mother and putative father to enter into a binding agreement for the support of an illegitimate child, thereby barring other remedies for support.[4]

A determination of custody and visitation rights in a paternity proceeding in accordance with the Uniform Parentage Act, rather than the marital dissolution statutes, does not deprive the father of equal protection where the determination is based, in either case, upon the child's best interests.[5] However, the procedure for adjudicating paternity under the Uniform Reciprocal

Enforcement of Support Act, under which the putative father has the burden of disproving paternity, denies him equal protection where the petitioner would have been required to prove paternity if it were not an interstate case.[6]

The rational relationship test applies to a claim that a statute creating a presumption that a child born to a married woman living with her husband is a child of the marriage violates equal protection.[7] Even though it denies the child the opportunity to rebut the presumption of legitimacy, such a statute does not deny the child equal protection since the statute pursues the legitimate goal of preventing the disruption of an otherwise peaceful marriage by the rational means of not allowing anyone but the husband or wife to contest the child's legitimacy.[8] Equal protection is also not violated in this situation by the denial of another man's right to establish his paternity[9] or to seek custody and visitation rights.[10]

A state paternity statute, which required identification of both the mother and father of a child and demanded that both parents provide support to the child, was rationally related to the legitimate and important government interest of ensuring that minor children born outside marriage receive support and education, and the means used by the statute to achieve that end were rationally related to the statute's legitimate purpose.[11]

There are some circumstances where a man with no marital relationship to the mother, and who has not received the child into his home, may be declared a presumed father under principles of due process and equal protection if he has attempted to assume his parental responsibilities to the child but has been prevented by the mother or by third parties from physically receiving the child into his home.[12]

A statute that authorizes court-ordered blood testing in a paternity action does not violate the putative father's equal protection rights.[13]

Equal protection is denied by a statute precluding granting custody to the putative father where he has not made an attempt to adopt the child legally.[14] It has also been held that granting the mother custody does not per se constitute invidious discrimination, but denying custody to a biological father who has developed the requisite relationship with his child denies him equal protection.[15]

CUMULATIVE SUPPLEMENT

Cases:

Purported father's paternity complaint, which alleged that four-year statute of limitations on actions to establish paternity was unconstitutional, stated both a plausible due process claim and an equal protection claim on its face; purported father alleged that he and mother had had sexual intercourse, which may have resulted in the birth of child, and that he was believed to be the father of the child, and alleged that there was no compelling public policy interests that currently existed to deny him the opportunity to establish paternity and pursue parental rights, and father's factual allegations raised a reasonable expectation that discovery would reveal evidence of the two constitutional claims. U.S. Const. Amend. 14; Neb. Const. art. 1, § 3; Neb. Rev. Stat. § 43-1411. Sherman T. v. Karyn N., 286 Neb. 468, 837 N.W.2d 746 (2013).

[END OF SUPPLEMENT]

Footnotes

1 Cal.—In re Charlotte D., 45 Cal. 4th 1140, 90 Cal. Rptr. 3d 724, 202 P.3d 1109 (2009).
Miss.—Estate of McCullough v. Yates, 32 So. 3d 403 (Miss. 2010).
Tex.—Purcell v. Bellinger, 940 S.W.2d 599 (Tex. 1997).
As to whether statutes of limitation applicable to paternity cases violate equal protection, see § 1390.

2 Fla.—Gammon v. Cobb, 335 So. 2d 261 (Fla. 1976).

3 N.H.—Locke v. Ladd, 119 N.H. 136, 399 A.2d 962 (1979).

4 N.Y.—Bacon v. Bacon, 46 N.Y.2d 477, 414 N.Y.S.2d 307, 386 N.E.2d 1327 (1979).

5 Haw.—Child Support Enforcement Agency v. Doe, 109 Haw. 240, 125 P.3d 461 (2005).
Mont.—Schuman v. Bestrom, 214 Mont. 410, 693 P.2d 536 (1985).

6 Tenn.—State ex rel. Dept. of Social Services v. Wright, 736 S.W.2d 84 (Tenn. 1987).

7 U.S.—Michael H. v. Gerald D., 491 U.S. 110, 109 S. Ct. 2333, 105 L. Ed. 2d 91 (1989).

8 U.S.—Michael H. v. Gerald D., 491 U.S. 110, 109 S. Ct. 2333, 105 L. Ed. 2d 91 (1989).

9 Tenn.—Evans v. Steelman, 970 S.W.2d 431 (Tenn. 1998).
Wyo.—A v. X, Y, and Z, 641 P.2d 1222 (Wyo. 1982).

10 Del.—Petitioner F. v. Respondent R., 430 A.2d 1075 (Del. 1981).

11 U.S.—Dubay v. Wells, 506 F.3d 422, 69 Fed. R. Serv. 3d 405 (6th Cir. 2007).

12 Cal.—J.R. v. D.P., 212 Cal. App. 4th 374, 150 Cal. Rptr. 3d 882 (2d Dist. 2012), review denied, (Apr. 10, 2013).

13 Ark.—R.N. v. J.M., 347 Ark. 203, 61 S.W.3d 149 (2001).
La.—In Interest of J.M., 590 So. 2d 565 (La. 1991).

14 Ill.—People ex rel. Slawek v. Covenant Children's Home, 52 Ill. 2d 20, 284 N.E.2d 291 (1972).
As to the putative father's consent to an adoption, see § 1586.

15 Vt.—In re S.B.L., 150 Vt. 294, 553 A.2d 1078 (1988).

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PART VI. Privileges and Immunities; Equal Protection

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§ 1587. Adoption

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Adoption statutes, including those dealing with the need to have an unwed father consent to the adoption, must meet equal protection requirements.

Legislation and practices relating to the adoption of children will be sustained if they comport with equal protection requirements.[1] For instance, there must be some rational relationship to a legitimate governmental purpose.[2] Equal protection is not violated by a statute making adoptions within a family less burdensome, in order to allow the child to quickly settle into a normal family relationship.[3]

A statute categorically banning homosexuals from adopting children discriminated against homosexuals and children without a rational basis for the discrimination, since it bore no rational relationship to a legitimate government objective, and thus under the rational basis test, was a violation of equal protection.[4]

An unwed father who has developed a relationship with his child must be treated equally with other parents when his child is to be adopted.[5] On the other hand, since the mere existence of a biological link is not sufficient to give an unwed father a fundamental

right to parent his illegitimate child,[6] intermediate scrutiny[7] applies to the question whether equal protection is violated by a statute imposing prerequisites to dispensing with a putative father's consent to adoption if he has not developed a substantial familial bond with the child.[8] Therefore, equal protection is not violated by consideration of the unmarried father's prebirth abandonment of the child[9] or by a requirement that an unwed father demonstrate a commitment to his parental responsibilities,[10] take some action to establish paternity,[11] or file an affidavit of paternity[12] before he can block the child's adoption by a third party. The application of a statute allowing the adoption of a child without the consent, or surrender or termination of parental rights, of a natural parent does not deny equal protection where a natural father was able to, but did not, provide support[13] or was incarcerated at all relevant times.[14] However, a requirement that an unwed father openly live with the child's mother for six months before the child's placement for adoption, as a condition of requiring his consent to the adoption, violates equal protection since that requirement neither legitimately furthers the State's interest nor sufficiently protects the father's.[15] The invalidity of a statute requiring only the mother's consent to an adoption of an illegitimate child is obviated by a statutory procedure by which the father can obtain rights with respect to the child.[16]

Statutes requiring the sealing of birth and adoption records of adopted children have been sustained.[17] Only minimal scrutiny need be given to a statute pertaining to the issuance of a local birth certificate for an adopted child born in a foreign county.[18]

CUMULATIVE SUPPLEMENT

Cases:

Provisions of Adoption Act that parent of child conceived or born outside marriage was responsible for his or her own actions and was not excused from strict compliance with Act based on any action, statement, or omission of other parent or third party, and that fraudulent representations or actions was not defense to strict compliance with requirements under Adoption Act, did not implicate Open Courts Clause of Utah Constitution, arising out of father's failure to bring paternity action, which was statutory prerequisite to preserve his right to intervene in adoption, in exchange for mother's false promise not to place child up for adoption; father was not asserting that Act abrogated any cause of action existing at common law without providing reasonable alternative remedy, and father in fact could still sue mother in tort. West's U.C.A. Const. Art. 1, § 11; West's U.C.A. §§ 78B–6–106, 78B–6–121. In re Adoption of B.Y., 2015 UT 67, 356 P.3d 1215 (Utah 2015).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Field v. C.I.R., T.C. Memo. 2013-111, T.C.M. (RIA) P 2013-111 (2013).
Ga.—Ehrhart v. Brooks, 231 Ga. 272, 201 S.E.2d 464 (1973).
N.Y.—In re St. Vincent's Services, Inc., 17 Misc. 3d 443, 841 N.Y.S.2d 834 (Fam. Ct. 2007).
Termination of relationship with biological parents
Ky.—Pyles v. Russell, 36 S.W.3d 365 (Ky. 2000).
As to adoption, generally, see C.J.S., Adoption of Persons §§ 1 et seq.

2 U.S.—Adar v. Smith, 639 F.3d 146 (5th Cir. 2011).
Cal.—Finberg v. Manset, 223 Cal. App. 4th 529, 167 Cal. Rptr. 3d 109 (2d Dist. 2014), review denied, (Apr. 23, 2014).
Residency requirement

No rational basis existed for applying residency requirements to an out-of-state aunt and her husband, who were petitioning to adopt her deceased sister's child, where the "baby market" was not implicated in the case, and the child's best interests would be served by permitting a hearing on the petition.

R.I.—In re Jeramie N., 688 A.2d 825 (R.I. 1997).

Grandparent visitation

La.—Rogers v. Pastureau, 117 So. 3d 517 (La. Ct. App. 1st Cir. 2013), writ denied, 120 So. 3d 247 (La. 2013).

3 Me.—Porter v. Hoffman, 592 A.2d 482 (Me. 1991).

4 Fla.—Florida Dept. of Children and Families v. Adoption of X.X.G., 45 So. 3d 79, 61 A.L.R.6th 621 (Fla. 3d DCA 2010); In re Adoption of Doe, 2008 WL 5006172 (Fla. Cir. Ct. 2008).

5 Cal.—In re Adoption of H.R., 205 Cal. App. 4th 455, 140 Cal. Rptr. 3d 327 (3d Dist. 2012).

Ga.—In re Baby Girl Eason, 257 Ga. 292, 358 S.E.2d 459 (1987).

Rights equal to mother's rights

Cal.—Adoption of Kelsey S., 1 Cal. 4th 816, 4 Cal. Rptr. 2d 615, 823 P.2d 1216 (1992).

6 N.M.—Helen G. v. Mark J.H., 2008-NMSC-002, 143 N.M. 246, 175 P.3d 914 (2007).

Utah—Swayne v. L.D.S. Social Services, 795 P.2d 637 (Utah 1990).

7 § 1278.

8 Neb.—Friehe v. Schaad, 249 Neb. 825, 545 N.W.2d 740 (1996).

9 Fla.—Matter of Adoption of Doe, 543 So. 2d 741 (Fla. 1989).

Neb.—In re Interest of M.B., 222 Neb. 757, 386 N.W.2d 877 (1986).

10 Cal.—Adoption of A.S., 212 Cal. App. 4th 188, 151 Cal. Rptr. 3d 15 (1st Dist. 2012), review denied, (Feb. 27, 2013).

11 Ind.—Adoptive Parents of M.L.V. v. Wilkens, 598 N.E.2d 1054 (Ind. 1992).

12 Utah—In re Adoption of J.S., 2014 UT 51, 2014 WL 5573353 (Utah 2014).

13 Ind.—Horlock v. Oglesby, 249 Ind. 251, 231 N.E.2d 810 (1967).

14 Ga.—Chandler v. Cochran, 247 Ga. 184, 275 S.E.2d 23 (1981).

As to equal protection challenges to statutes dealing with the termination of parental rights, see § 1588.

15 N.Y.—Matter of Raquel Marie X., 76 N.Y.2d 387, 559 N.Y.S.2d 855, 559 N.E.2d 418 (1990).

16 Utah—Ellis v. Social Services Dept. of Church of Jesus Christ of Latter-Day Saints, 615 P.2d 1250 (Utah 1980).

17 Ill.—In re Roger B., 84 Ill. 2d 323, 49 Ill. Dec. 731, 418 N.E.2d 751 (1981).

Mo.—Application of Gilbert, 563 S.W.2d 768 (Mo. 1978).

S.C.—Bradey v. Children's Bureau of South Carolina, 275 S.C. 622, 274 S.E.2d 418 (1981).

18 N.J.—Matter of Adoption of a Child by L. C., 85 N.J. 152, 425 A.2d 686, 14 A.L.R.4th 725 (1981).

A.L.R. Library

Validity and application of statute authorizing change in record of birthplace of adopted child, 14 A.L.R.4th 739.

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§ 1588. Child protective proceedings; termination of parental rights

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Equal protection requirements apply in child protection proceedings, and indigent parents are generally entitled to the appointment of counsel and to appeal without prepaying costs.

Courts have upheld, in the face of equal protection claims, a juvenile court's exercise of jurisdiction when children present in the state are dependent even if they were residents of another state,[1] different scheduling priorities for abuse and runaway cases,[2] a lower statutory threshold for admitting evidence of sexual abuse of a child,[3] the placement of a parent's name in a child abuse registry,[4] and the removal of children from foster homes, in light of the State's compelling interest in reuniting children with their parents.[5] While a rebuttable presumption that parents convicted of certain crimes are unfit is permissible,[6] the conclusive application of such a presumption does violate equal protection where a parallel statutory provision afforded parents convicted of some of the same or even more serious crimes an opportunity for rebuttal.[7]

A statute providing for termination of parental rights must provide similar treatment for similarly situated parents.[8]

While statutes governing bringing of petitions for termination of parental rights may be subject to a rational basis review,[9] strict scrutiny applies to statutes prescribing the procedure for the termination of fundamental parental rights dissolving the bonds between parent and child.[10] In order to survive such strict scrutiny analysis, the statute must be necessary to serve a compelling state interest and must be narrowly tailored so as to use the least restrictive means consistent with the attainment of the government's goal.[11]

Termination of parental rights statutes must be liberally construed in order to ensure prompt judicial procedures for freeing minor children from the custody and control of their parents by terminating the parent-child relationship.[12]

The different purposes of adoption and dependent children statutes may justify different standards governing the involuntary termination of parental rights.[13] Termination of a natural father's parental rights, under a statute authorizing termination of parental rights in the best interest of the child to allow adoption when the child has been in a guardian's custody for two years, does not violate the father's right to equal protection since the statute does not treat natural fathers differently from mothers or presumed fathers.[14]

Statutes providing for the termination of the rights of parents who are unable to provide proper care due to mental illness have generally been upheld in the face of equal protection challenges.[15]

While a statute that allows the termination of an unwed father's parental rights on nothing more than the mother's showing of the child's best interests violates equal protection,[16] a putative father of a child conceived as a result of a sexual assault does not have an equal protection right to challenge the termination of his parental rights, at least where he has not established a parental relationship with the child.[17] Under some statutory provisions, if an unwed father promptly comes forward and demonstrates a full commitment to his parental responsibilities—emotional, financial, and otherwise—and demonstrates a willingness himself to assume full custody of the child, the constitution prohibits the termination of his parental relationship absent a showing of his unfitness as a parent,[18] and his parental rights are entitled to equal protection as those of the mother.[19]

Equal protection requires that counsel be appointed for a parent when the State terminates an indigent parent's rights.[20] Appointed counsel must be provided in termination proceedings under an adoption act if it would have been afforded to parents in termination proceedings brought by the State under a juvenile court act.[21] However, with regard to the appointment of a guardian ad litem, there is no requirement that mentally disabled parents and minors be treated in the same manner.[22]

A state may not condition an indigent parent's right to appeal a judgment terminating parental rights on the prepayment of costs.[23] Indigent parents must be provided with counsel and a transcript at public expense for appeals as of right in termination proceedings.[24] However, while a decision to quash a subpoena of the child in a termination proceeding may be challenged if it was based solely on the failure to tender the fee, a mother's rights were not violated where she did not identify any testimony that her child could have offered that would have affected the case's outcome, and the child's statement made outside of court was admissible.[25]

The application of a termination of parental rights statute to a juvenile mother did not violate her due process or equal protection rights where she was given sufficient notice of impending state action, and she was represented by counsel throughout the proceedings.[26]

For purposes of equal protection analysis, the expedition of appeals from termination orders is justified by a state's compelling interest in obtaining permanent homes for children as soon as possible.[27]

The fact that state law requires a lesser burden of proof than the Indian Child Welfare Act in proceedings to terminate parental rights,[28] or does not prescribe a preference for adoptive placement with biological relatives, as does that Act,[29] does not violate equal protection, in light of Indians' special status, placing an Indian in a different situation than others.[30]

CUMULATIVE SUPPLEMENT

Cases:

Termination of parental rights statutes were not unconstitutional as applied to mother in violation of due process clause, in proceeding on petition to terminate mother's parental rights filed by Department of Social and Health Services after mother repeatedly failed to complete substance abuse treatment and declined to participate in mental health counseling, even though adoption was not imminent; it was clearly established that mother's ongoing relationship was harmful to her children, and children had prospects for adoption. U.S. Const. Amend. 14; Wash. Rev. Code Ann. §§ 13.34.180, 13.34.190. Matter of Dependency of M.-A.F.-S., 421 P.3d 482 (Wash. Ct. App. Div. 1 2018).

Termination of parental rights statutes were narrowly drawn to achieve the compelling interest of the State to prevent harm to children, and thus, statutes did not violate substantive due process or interfere with the fundamental rights of parents to the care and custody of their children; statutes required courts to find by clear, cogent, and convincing evidence that termination was necessary to prevent harm to children, statutes were narrowly tailored to ensure that harm to child was not abstract concept and that continuation of parental relationship was barrier to permanency, and statutes did not require existence of adoptive family or permanent placement for the child. U.S. Const. Amend. 14; Wash. Rev. Code Ann. §§ 13.34.180, 13.34.190. Matter of Dependency of M.-A.F.-S., 415 P.3d 1239 (Wash. Ct. App. Div. 1 2018).

[END OF SUPPLEMENT]

Footnotes

1 Colo.—E.P. v. District Court of Garfield County, 696 P.2d 254 (Colo. 1985).

2 Ill.—People v. R.G., 131 Ill. 2d 328, 137 Ill. Dec. 588, 546 N.E.2d 533 (1989).

3 Mass.—Care and Protection of Rebecca, 419 Mass. 67, 643 N.E.2d 26 (1994).

4 Iowa—Roth v. Reagen, 422 N.W.2d 464 (Iowa 1988).

5 Iowa—In Interest of A.C., 415 N.W.2d 609 (Iowa 1987).

6 Me.—In re Sarah T., 629 A.2d 53 (Me. 1993).

7 Ill.—In re D.W., 214 Ill. 2d 289, 292 Ill. Dec. 937, 827 N.E.2d 466 (2005).

8 Ga.—In re A.C., 285 Ga. 829, 686 S.E.2d 635 (2009).
Ill.—In re C.E., 406 Ill. App. 3d 97, 346 Ill. Dec. 125, 940 N.E.2d 125 (1st Dist. 2010).
Me.—In re D.P., 2013 ME 40, 65 A.3d 1216 (Me. 2013).
Minn.—In re Welfare of Child of R.D.L., 853 N.W.2d 127 (Minn. 2014).
Right to counsel
Mont.—In re Adoption of A.W.S., 2014 MT 322, 377 Mont. 234, 339 P.3d 414 (2014).

9 Me.—In re D.P., 2013 ME 40, 65 A.3d 1216 (Me. 2013).

10 Ill.—In re D.W., 214 Ill. 2d 289, 292 Ill. Dec. 937, 827 N.E.2d 466 (2005).
Minn.—In re Welfare of Child of R.D.L., 853 N.W.2d 127 (Minn. 2014).

11 Ill.—In re D.W., 214 Ill. 2d 289, 292 Ill. Dec. 937, 827 N.E.2d 466 (2005).
Minn.—In re Welfare of Child of R.D.L., 853 N.W.2d 127 (Minn. 2014).
Allowing adoption
Statute narrowly tailored to serve the strong state interest of protecting children by allowing their adoption.

Md.—In re Adoption/Guardianship No. 93321055/CAD, 344 Md. 458, 687 A.2d 681 (1997).

12 S.C.—Doe v. Roe, 386 S.C. 624, 690 S.E.2d 573 (2010).

13 Alaska—Matter of Adoption of B.S.L., 779 P.2d 1222 (Alaska 1989).

14 Cal.—In re Charlotte D., 45 Cal. 4th 1140, 90 Cal. Rptr. 3d 724, 202 P.3d 1109 (2009).

15 Colo.—People in Interest of C.B., 740 P.2d 11 (Colo. 1987).

Conn.—In re Brendan C., 89 Conn. App. 511, 874 A.2d 826 (2005).

Ga.—In re H.M., 287 Ga. App. 418, 651 S.E.2d 527 (2007).

Ill.—In re R.C., 195 Ill. 2d 291, 253 Ill. Dec. 699, 745 N.E.2d 1233 (2001).

Neb.—In re Interest of S.L.P., 230 Neb. 635, 432 N.W.2d 826 (1988).

16 Cal.—Adoption of Kelsey S., 1 Cal. 4th 816, 4 Cal. Rptr. 2d 615, 823 P.2d 1216 (1992).

17 W. Va.—Kessel v. Leavitt, 204 W. Va. 95, 511 S.E.2d 720 (1998).

Wis.—Matter of SueAnn A.M., 176 Wis. 2d 673, 500 N.W.2d 649 (1993).

18 Cal.—Adoption of Baby Boy W., 232 Cal. App. 4th 438, 181 Cal. Rptr. 3d 130 (4th Dist. 2014), review denied, (Mar. 18, 2015).

Factors considered in determining parental commitment

Court should consider all relevant factors, including the father's conduct both before and after the child's birth, the father's public acknowledgment of paternity, payment of pregnancy and birth expenses commensurate with his ability to do so, and prompt legal action to seek custody of the child.

Cal.—Adoption of A.S., 212 Cal. App. 4th 188, 151 Cal. Rptr. 3d 15 (1st Dist. 2012), review denied, (Feb. 27, 2013).

19 Cal.—Adoption of Baby Boy W., 232 Cal. App. 4th 438, 181 Cal. Rptr. 3d 130 (4th Dist. 2014), review denied, (Mar. 18, 2015); Adoption of A.S., 212 Cal. App. 4th 188, 151 Cal. Rptr. 3d 15 (1st Dist. 2012), review denied, (Feb. 27, 2013).

20 Ill.—In re Adoption of K.L.P., 198 Ill. 2d 448, 261 Ill. Dec. 492, 763 N.E.2d 741 (2002).

Iowa—Crowell v. State Public Defender, 845 N.W.2d 676 (Iowa 2014).

N.D.—Matter of Adoption of K.A.S., 499 N.W.2d 558 (N.D. 1993); In re B.M., 181 Ohio App. 3d 606, 2009-Ohio-1718, 910 N.E.2d 46 (11th Dist. Geauga County 2009).

Payment by nonindigent parent

Statutory requirement that nonindigent parent pay costs of indigent parent's counsel in termination of parental rights proceedings did not violate equal protection.

Iowa—In re W.W., 826 N.W.2d 706 (Iowa Ct. App. 2012).

21 Ill.—In re Adoption of L.T.M., 214 Ill. 2d 60, 291 Ill. Dec. 645, 824 N.E.2d 221 (2005).

Iowa—In re S.A.J.B., 679 N.W.2d 645 (Iowa 2004).

Mont.—In re Adoption of A.W.S., 2014 MT 322, 377 Mont. 234, 339 P.3d 414 (2014).

Notice

Child's biological father was entitled, pursuant to equal protection guarantee of state constitution, to be informed by the court of his right to counsel, including appointed counsel in event he was indigent, in involuntary termination of parental rights action under Revised Uniform Adoption Act.

N.D.—In re Adoption of J.D.F., 2009 ND 21, 761 N.W.2d 582 (N.D. 2009).

22 Colo.—People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

23 U.S.—M.L.B. v. S.L.J., 519 U.S. 102, 117 S. Ct. 555, 136 L. Ed. 2d 473 (1996).

24 Ohio—In re P.M., 179 Ohio App. 3d 413, 2008-Ohio-6041, 902 N.E.2d 74 (2d Dist. Montgomery County 2008).

As to equal protection rights with respect to an appeal, generally, see § 1407.

Agency determination of indigency

Equal protection rights of parents were not violated by requiring parents to pay a portion of costs mandated by Department of Family and Children Services since parents were required to pay based on a Department determination that they were able to pay; a family that could afford to contribute financially was not similarly situated to a family that could not afford to do so.

Ga.—In re P.N., 291 Ga. App. 512, 662 S.E.2d 287 (2008).

Frivolous appeal

A statute governing appeals in termination of parental rights proceedings, requiring that trial court determine whether an appeal was frivolous did not violate indigent mother's equal protection rights although the

frivolousness finding had the effect of denying an indigent appellant the right to a free clerk's record and reporter's record of the underlying trial.

Tex.—In re K.D., 202 S.W.3d 860 (Tex. App. Fort Worth 2006).

25 Me.—In re Kayla S., 2001 ME 79, 772 A.2d 858 (Me. 2001).

26 Okla.—In re E.S., 2007 OK CIV APP 73, 166 P.3d 505 (Div. 4 2007).

27 Iowa—In re C.M., 652 N.W.2d 204 (Iowa 2002).

28 Me.—In re Marcus S., 638 A.2d 1158 (Me. 1994).

29 Alaska—Matter of W.E.G., 710 P.2d 410 (Alaska 1985).

30 Me.—In re Marcus S., 638 A.2d 1158 (Me. 1994).

Wash.—In re Beach, 159 Wash. App. 686, 246 P.3d 845 (Div. 3 2011).

The Indian Child Welfare Act is generally discussed in C.J.S., Indians §§ 154, 155, 170.

As to equal protection claims involving American Indians, generally, see § 1595.

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

O. Property Rights

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Research References

A.L.R. Library

A.L.R. Index, Building Codes
A.L.R. Index, Constitutional Law
A.L.R. Index, Eminent Domain
A.L.R. Index, Equal Protection of Law
A.L.R. Index, Landlord and Tenant
A.L.R. Index, Property
A.L.R. Index, Zoning
West's A.L.R. Digest, Constitutional Law 3089, 3090, 3091, 3114, 3144 to 3147, 3184, 3201, 3213, 3214, 3217, 3318, 3352, 3495 to 3502, 3504 to 3506, 3511 to 3515, 3522, 3737

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O. Property Rights

§ 1589. Generally

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West's Key Number Digest

West's Key Number Digest, Constitutional Law 3089, 3090, 3091, 3114, 3144 to 3147, 3184, 3201, 3213, 3214, 3217, 3318, 3352, 3495 to 3502, 3504 to 3506, 3511 to 3515, 3522, 3737

Equal protection protects the rights to acquire, enjoy, own, and dispose of property.

The rights to acquire, enjoy, own, and dispose of property are protected by the Equal Protection Clause from discriminatory state action.[1] In the absence of a fundamental interest, and where a provision does not implicate a suspect class, the test for determining the constitutionality of a provision relating to property rights is whether it is rationally related to a legitimate legislative goal.[2]

In accordance with these rules, the courts have upheld statutes restricting ownership of land by aliens,[3] pertaining to the exercise of the surviving spouse's right of election,[4] granting abutting owners the right of first refusal to purchase unneeded highway property,[5] prohibiting aggressive panhandling and pedestrian presence on traffic medians,[6] dealing with children omitted from a will,[7] governing claims of a child born out of wedlock,[8] governing inheritance by adoptive children,[9] voiding a will disposition to a subscribing witness or spouse in the absence of a specified number of other subscribing witnesses,[10] allowing a relative

who cared for the decedent a claim against the estate,[11] precluding veterans' guardians from taking under the ward's will,[12] prescribing eligibility for a homestead,[13] restricting signs and billboards,[14] and relating to mineral interests.[15]

On the other hand, the courts have denied the validity of a statute relating to homeowners' association elections,[16] mortmain statutes invalidating gifts made within a specified period preceding death for religious or charitable purposes,[17] a statute preventing a person from using as a testamentary trustee a corporation in a contiguous state but not a corporation domiciled or licensed elsewhere,[18] and selective enforcement of restrictive covenants and condominium restrictions.[19]

Homeless persons.

For equal protection purposes, laws authorizing disparate treatment of homeless persons as a class must be found to be rationally related to a legitimate legislative goal.[20]

Footnotes

1 Cal.—Mulkey v. Reitman, 64 Cal. 2d 529, 50 Cal. Rptr. 881, 413 P.2d 825 (1966), judgment aff'd, 387 U.S. 369, 87 S. Ct. 1627, 18 L. Ed. 2d 830 (1967).
N.H.—Gazzola v. Clements, 120 N.H. 25, 411 A.2d 147 (1980).
Wis.—Ferdon ex rel. Petrucelli v. Wisconsin Patients Compensation Fund, 2005 WI 125, 284 Wis. 2d 573, 701 N.W.2d 440 (2005).

2 U.S.—Sansotta v. Town of Nags Head, 724 F.3d 533 (4th Cir. 2013).
Ala.—Madison v. Lambert, 399 So. 2d 840 (Ala. 1981).
Ill.—People v. Downin, 357 Ill. App. 3d 193, 293 Ill. Dec. 371, 828 N.E.2d 341 (3d Dist. 2005).
N.Y.—People v. Novie, 41 Misc. 3d 63, 976 N.Y.S.2d 636 (App. Term 2013).
Utah—State v. Holm, 2006 UT 31, 137 P.3d 726, 22 A.L.R.6th 665 (Utah 2006).
Bequests in wills
Mass.—Dorfman v. Allen, 386 Mass. 136, 434 N.E.2d 1012 (1982).

3 Wis.—Lehndorff Geneva, Inc. v. Warren, 74 Wis. 2d 369, 246 N.W.2d 815 (1976).
As to classifications affecting aliens, generally, see § 1594.

4 Minn.—In re Guardianship, Conservatorship of Durand, 859 N.W.2d 780 (Minn. 2015).
Mont.—Matter of Merkel's Estate, 190 Mont. 78, 618 P.2d 872 (1980).
S.C.—Mitchell v. Owens, 304 S.C. 23, 402 S.E.2d 888 (1991).
A.L.R. Library
Statutory or constitutional provision allowing widow but not widower to take against will and receive dower interests, allowances, homestead rights, or the like as denial of equal protection of law, 18 A.L.R.4th 910.

5 W. Va.—McCoy v. VanKirk, 201 W. Va. 718, 500 S.E.2d 534 (1997).

6 U.S.—Thayer v. City of Worcester, 755 F.3d 60 (1st Cir. 2014).

7 Ark.—Holland v. Willis, 293 Ark. 518, 739 S.W.2d 529 (1987).
Mass.—Hanson v. Markham, 371 Mass. 262, 356 N.E.2d 702 (1976).
As to the omission of children born out of wedlock, see § 1585.
Equal treatment
Equal protection does not require a testator or the settlor of a trust to treat all children equally.
Ill.—In re Estate of Feinberg, 235 Ill. 2d 256, 335 Ill. Dec. 863, 919 N.E.2d 888 (2009).

8 Conn.—Walsh v. Jodoin, 283 Conn. 187, 925 A.2d 1086 (2007).
Ind.—In re Paternity of A.R.S.A., 876 N.E.2d 1161 (Ind. Ct. App. 2007).
Tenn.—Lanier v. Rains, 229 S.W.3d 656 (Tenn. 2007).

9 Ga.—Nunnally v. Trust Co. Bank, 244 Ga. 697, 261 S.E.2d 621 (1979).

10 Mass.—Dorfman v. Allen, 386 Mass. 136, 434 N.E.2d 1012 (1982).

11 Ill.—In re Estate of Jolliff, 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346 (2002).

12 Ga.—Cross v. Stokes, 275 Ga. 872, 572 S.E.2d 538 (2002).

13 Neb.—Landon v. Pettijohn, 231 Neb. 837, 438 N.W.2d 757 (1989).

S.D.—In re Davis, 2004 SD 70, 681 N.W.2d 452 (S.D. 2004).

14 U.S.—Central Radio Co. Inc. v. City of Norfolk, Virginia, 776 F.3d 229 (4th Cir. 2015).

Ohio—Mega Outdoor, L.L.C. v. Dayton, 173 Ohio App. 3d 359, 2007-Ohio-5666, 878 N.E.2d 683 (2d Dist. Montgomery County 2007).

Pa.—Adams Outdoor Advertising, LP v. Zoning Hearing Bd. of Smithfield Tp., 909 A.2d 469 (Pa. Commw. Ct. 2006).

15 U.S.—Texaco, Inc. v. Short, 454 U.S. 516, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982).

Mont.—Matter of Montana Pac. Oil and Gas Co., 189 Mont. 11, 614 P.2d 1045 (1980).

Oil and gas interests

Mich.—Van Slooten v. Larsen, 410 Mich. 21, 299 N.W.2d 704, 16 A.L.R.4th 1005 (1980).

16 Mich.—Baldwin v. North Shore Estates Ass'n, 384 Mich. 42, 179 N.W.2d 398 (1970).

17 D.C.—Estate of French, 365 A.2d 621 (D.C. 1976).

Fla.—Shriners Hospitals for Crippled Children v. Zrillic, 563 So. 2d 64 (Fla. 1990).

Pa.—In re Riley's Estate, 459 Pa. 428, 329 A.2d 511 (1974).

Mortmain statutes are generally discussed in C.J.S., Wills § 108.

18 S.C.—Dunn v. North Carolina Nat. Bank, 276 S.C. 202, 277 S.E.2d 143 (1981).

19 Fla.—Franklin v. White Egret Condominium, Inc., 358 So. 2d 1084 (Fla. 4th DCA 1977), judgment aff'd, 379 So. 2d 346 (Fla. 1979).

Tex.—Shaver v. Hunter, 626 S.W.2d 574 (Tex. App. Amarillo 1981), writ refused n.r.e., (May 12, 1982).

20 U.S.—Sanchez v. City of Fresno, 914 F. Supp. 2d 1079 (E.D. Cal. 2012).

Cal.—Allen v. City of Sacramento, 234 Cal. App. 4th 41, 183 Cal. Rptr. 3d 654 (3d Dist. 2015).

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§ 1590. Building and zoning regulations

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West's Key Number Digest

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Building and zoning regulations must meet the rational relationship test and be made and enforced in a manner that does not discriminate between persons similarly situated.

Land use ordinances that do not implicate a suspect classification[1] must meet the rational relationship standard[2] although a higher level of scrutiny may be required under a particular state's constitution.[3] Zoning classifications must be founded on real differences furthering the purpose of the zoning scheme[4] and further a legitimate state interest[5] in promoting the public health, safety, morals, and general welfare of the citizens of a locality.[6] Furthermore, the power to grant or refuse zoning permits without standards denies applicants equal protection.[7]

A state or municipal corporation may, without denying equal protection, make regulations with regard to such matters as setback requirements,[8] buffer zones around certain businesses,[9] building permits,[10] multifamily housing,[11] commercial signs,[12] landscaping,[13] parking commercial vehicles in residential areas,[14] residential lofts,[15] and fire codes.[16] Equal protection is also not violated by the adoption of a farm land management plan where the restrictions are no more severe than those placed on farmers participating in farm easement programs under other statutes.[17]

Equal protection is not denied by rationally establishing priorities for building code enforcement.[18] A building regulation, however, may not be made or enforced in such a manner as to discriminate between persons similarly situated.[19] An equal protection challenge to a zoning decision requires establishing that the government treated an applicant differently from other similarly situated landowners without any reasonable basis.[20] Thus, while equal protection is not violated by the denial of a zoning request or placing conditions on allowing the application, when other ones have been granted, if the properties or applicants are not similarly situated,[21] once a local government granted a special exception allowing a particular use in a residential district, any discrimination against a future similarly situated landowner's right to seek a special exception would violate the Equal Protection Clause.[22] An equal protection claim based on the contention that the current applicant was subjected to a higher level of scrutiny than any other in recent years will be rejected if the applicant fails to provide evidence that any of the previous applications were similar in nature, location, and scope to the current one.[23] Also, to establish selective enforcement of a zoning ordinance in violation of the Equal Protection Clause, a landowner must show that the selective treatment was based on impermissible considerations such as race, religion, an intent to inhibit the exercise of constitutional rights, or a malicious or bad faith intent to injure.[24]

Grandfathering a property's zoning classification does not violate equal protection, even though this only applied to one property, where there was no evidence that other lots or projects in the city were similarly situated.[25]

Mobile homes.

Since mobile homes are sufficiently different from permanent residences, building codes may place different requirements on them, without violating the Equal Protection Clause.[26] The exclusion of mobile homes from some, but not all, residential districts may be rationally related to legitimate government purposes of preserving land for single family dwellings and protecting other interests, such as aesthetics and traffic flow.[27]

CUMULATIVE SUPPLEMENT

Cases:

Amendment to city zoning ordinance, which restricted the number of college students who may live together in single-family homes in certain residential areas, did not implicate a fundamental right protected by state's constitution, as would require heightened scrutiny rather than rational basis review on rental property owner's and college students' equal protection challenge to the ordinance; notion of right to live anywhere with anyone was not a fundamental right and flew in face of the purpose of zoning as a concept in and of itself. R.I. Const. art. 1, § 2. Federal Hill Capital, LLC v. City of Providence by and through Lombardi, 227 A.3d 980 (R.I. 2020), as corrected, (June 20, 2020).

[END OF SUPPLEMENT]

Footnotes

1 § 1282.

2 U.S.—American Tower Corp. v. City of San Diego, 763 F.3d 1035 (9th Cir. 2014).
Ariz.—Coleman v. City of Mesa, 230 Ariz. 352, 284 P.3d 863 (2012).
Cal.—Griffith v. City of Santa Cruz, 207 Cal. App. 4th 982, 143 Cal. Rptr. 3d 895 (6th Dist. 2012).

Ga.—Gasses v. City of Riverdale, 288 Ga. 75, 701 S.E.2d 157 (2010).
Iowa—Blumenthal Inv. Trusts v. City of West Des Moines, 636 N.W.2d 255 (Iowa 2001).
Minn.—Studor, Inc. v. State, 781 N.W.2d 403 (Minn. Ct. App. 2010).
Pa.—Bawa Muhaiyaddeen Fellowship v. Philadelphia Zoning Bd. of Adjustment, 19 A.3d 36 (Pa. Commw. Ct. 2011).
S.C.—Dunes West Golf Club, LLC v. Town of Mount Pleasant, 401 S.C. 280, 737 S.E.2d 601 (2013).

Violation

A zoning or licensing ordinance violates the Equal Protection Clause where a plaintiff can demonstrate that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.

U.S.—Moore-King v. County of Chesterfield, Va., 708 F.3d 560 (4th Cir. 2013).

3 N.H.—Taylor v. Town of Plaistow, 152 N.H. 142, 872 A.2d 769 (2005).

Intermediate scrutiny

N.H.—Community Resources for Justice, Inc. v. City of Manchester, 154 N.H. 748, 917 A.2d 707 (2007).

4 U.S.—Cordi-Allen v. Conlon, 494 F.3d 245 (1st Cir. 2007).
N.J.—Rumson Estates, Inc. v. Mayor & Council of Borough of Fair Haven, 177 N.J. 338, 828 A.2d 317 (2003).

Indiscriminate rezoning

Landowners stated a claim for deprivation of equal protection by alleging that a town engaged in wholesale rezoning efforts without examining the particular suitability of the land to its zoned usage.

Wis.—Thorp v. Town of Lebanon, 2000 WI 60, 235 Wis. 2d 610, 612 N.W.2d 59 (2000).

5 U.S.—American Tower Corp. v. City of San Diego, 763 F.3d 1035 (9th Cir. 2014).

6 Alaska—Luper v. City of Wasilla, 215 P.3d 342 (Alaska 2009).
Ga.—City of Roswell v. Fellowship Christian School, Inc., 281 Ga. 767, 642 S.E.2d 824, 218 Ed. Law Rep. 744 (2007).
Mont.—Yurczyk v. Yellowstone County, 2004 MT 3, 319 Mont. 169, 83 P.3d 266 (2004).
Va.—Schefer v. City Council of City of Falls Church, 279 Va. 588, 691 S.E.2d 778 (2010).

7 Vt.—In re Handy, 171 Vt. 336, 764 A.2d 1226 (2000).

8 U.S.—Gorieb v. Fox, 274 U.S. 603, 47 S. Ct. 675, 71 L. Ed. 1228, 53 A.L.R. 1210 (1927).
N.H.—Bacon v. Town of Enfield, 150 N.H. 468, 840 A.2d 788 (2004).

9 N.H.—Taylor v. Town of Plaistow, 152 N.H. 142, 872 A.2d 769 (2005).

10 **To install incinerator**

N.M.—Barber's Super Markets, Inc. v. City of Grants, 1969-NMSC-115, 80 N.M. 533, 458 P.2d 785 (1969).

11 Ohio—White Oak Property Development, LLC v. Washington Tp., Ohio, 606 F.3d 842 (6th Cir. 2010).

12 U.S.—Melrose, Inc. v. City of Pittsburgh, 613 F.3d 380 (3d Cir. 2010).
Mont.—Montana Media, Inc. v. Flathead County, 2003 MT 23, 314 Mont. 121, 63 P.3d 1129 (2003).

13 Ark.—Craft v. City of Fort Smith, 335 Ark. 417, 984 S.W.2d 22 (1998).

14 S.C.—Whaley v. Dorchester County Zoning Bd. of Appeals, 337 S.C. 568, 524 S.E.2d 404 (1999).

15 N.Y.—Spring Realty Co. v. New York City Loft Bd., 69 N.Y.2d 657, 511 N.Y.S.2d 830, 503 N.E.2d 1367 (1986).

16 U.S.—Grider v. City of Auburn, Ala., 618 F.3d 1240 (11th Cir. 2010).
Ill.—Wauconda Fire Protection Dist. v. Stonewall Orchards, LLP, 214 Ill. 2d 417, 293 Ill. Dec. 246, 828 N.E.2d 216 (2005).
Md.—Kane v. Board of Appeals of Prince George's County, 390 Md. 145, 887 A.2d 1060 (2005).
N.H.—Fischer v. New Hampshire State Bldg.Code Review Bd., 154 N.H. 585, 914 A.2d 1234 (2006).

17 N.J.—Gardner v. New Jersey Pinelands Com'n, 125 N.J. 193, 593 A.2d 251 (1991).

18 Or.—Shaffer v. City of Winston, 33 Or. App. 391, 576 P.2d 823 (1978).

19 U.S.—Curtis v. Wilks, 704 F. Supp. 2d 771, 82 Fed. R. Evid. Serv. 109 (N.D. Ill. 2010).
N.Y.—Kreamer v. Town of Oxford, 96 A.D.3d 1130, 946 N.Y.S.2d 284 (3d Dep't 2012).

20 U.S.—Guth v. Tazewell County, 698 F.3d 580 (7th Cir. 2012).
N.Y.—Sonne v. Board of Trustees of Village of Suffern, 67 A.D.3d 192, 887 N.Y.S.2d 145 (2d Dep't 2009).
Tex.—City of Paris v. Abbott, 360 S.W.3d 567 (Tex. App. Texarkana 2011).

21 U.S.—Cordi-Allen v. Conlon, 494 F.3d 245 (1st Cir. 2007).

Ga.—Rockdale County v. Burdette, 278 Ga. 755, 604 S.E.2d 820 (2004).
Iowa—Blumenthal Inv. Trusts v. City of West Des Moines, 636 N.W.2d 255 (Iowa 2001).
N.Y.—Molander v. Pepperidge Lake Homeowners Ass'n, 82 A.D.3d 1180, 920 N.Y.S.2d 201 (2d Dep't 2011).
S.C.—Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013), cert. denied, 134 S. Ct. 792, 187 L. Ed. 2d 595 (2013).

22 **Religious use**
U.S.—Congregation Kol Ami v. Abington Township, 309 F.3d 120 (3d Cir. 2002).

23 N.H.—Bayson Properties, Inc. v. City of Lebanon, 150 N.H. 167, 834 A.2d 202 (2003).

24 Vt.—In re Letourneau, 168 Vt. 539, 726 A.2d 31 (1998).

25 Me.—Fitanides v. City of Saco, 2004 ME 32, 843 A.2d 8 (Me. 2004).

26 Mich.—Lanphear v. Antwerp Tp., Van Buren County, 50 Mich. App. 641, 214 N.W.2d 66 (1973).
N.C.—Currituck County v. Willey, 46 N.C. App. 835, 266 S.E.2d 52 (1980).

27 S.C.—Bibco Corp. v. City of Sumter, 332 S.C. 45, 504 S.E.2d 112 (1998).

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PART VI. Privileges and Immunities; Equal Protection

XVII. Subjects and Applications of Equal Protection Guarantee

O. Property Rights

§ 1591. Eminent domain

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3499 to 3502

Eminent domain laws or proceedings ordinarily do not deny equal protection.

Statutes granting or delegating the right to exercise the power of eminent domain and prescribing the proceedings to be taken, together with the proceedings actually taken in accordance with those laws, are generally held not to deny equal protection.[1] This is true even if the acquired property may be resold[2] and even though the legislature grants different rights to different classes of corporations[3] and against different classes of property[4] or prescribes different methods of procedure for different classes of cases.[5] Equal protection is not violated so long as the classification or discrimination is not arbitrary, unjust, or unreasonable but is based on a real difference or distinction.[6] In order for the State not to violate a landowners' equal protection rights, the exercise of the power of eminent domain must be rationally related to a legitimate government interest.[7]

The Takings Clause of the Fifth Amendment prohibits private property from being taken for public use without just compensation and is made applicable to the states by the Fourteenth Amendment. The U.S. Supreme Court has held that a city's exercise of its eminent domain power in furtherance of an economic development plan satisfied the constitutional "public use" requirement, even though the city was not planning to open the condemned land to use by the general public, where the plan served a public purpose, namely, economic development of a depressed area.[8] Once it has been determined that the use for

which property rights are being taken by eminent domain is a public one, and that the taking is necessary for that use, neither a property owner whose property is taken in return for just compensation nor a property owner whose property is not taken is in a position to claim a denial of equal protection.[9] However, equal protection is denied when the right to a hearing depends on the reason for which the State desires the land.[10]

Statutes regarding the compensation or damages to be paid in eminent domain proceedings do not violate equal protection[11] unless they contain a differentiation representing an unreasonable and improper classification.[12]

Footnotes

1 U.S.—Crane v. Hahlo, 258 U.S. 142, 42 S. Ct. 214, 66 L. Ed. 514 (1922).
Ga.—Coffee v. Atkinson County, 236 Ga. 248, 223 S.E.2d 648 (1976).
Ind.—Decatur County Rural Elec. Membership Corp. v. Public Service Co. of Indiana, 261 Ind. 128, 301 N.E.2d 191 (1973).
N.Y.—City of Buffalo v. J. W. Clement Co., 28 N.Y.2d 241, 321 N.Y.S.2d 345, 269 N.E.2d 895 (1971).
Taking vacant land in redevelopment area
Mo.—Parking Systems, Inc. v. Kansas City Downtown Redevelopment Corp., 518 S.W.2d 11 (Mo. 1974).

2 Ill.—City of Chicago v. Walker, 50 Ill. 2d 69, 277 N.E.2d 129 (1971).
R.I.—Ajootian v. Providence Redevelopment Agency of City of Providence, 80 R.I. 73, 91 A.2d 21 (1952).

3 Mo.—Kansas City v. Webb, 484 S.W.2d 817 (Mo. 1972).

4 U.S.—Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U.S. 30, 36 S. Ct. 234, 60 L. Ed. 507 (1916).
Water and electric utilities
Ala.—Avery v. Marengo County Com'n, 646 So. 2d 1347 (Ala. 1994).
Single family homes near airport
Ga.—City of Atlanta v. Watson, 267 Ga. 185, 475 S.E.2d 896 (1996).

5 Ga.—Collins v. Metropolitan Atlanta Rapid Transit Authority, 163 Ga. App. 168, 291 S.E.2d 742 (1982).
Mich.—Chamberlin v. Detroit Edison Co., 14 Mich. App. 565, 165 N.W.2d 845 (1968).
N.H.—Malnati v. State, 148 N.H. 94, 803 A.2d 587 (2002).

6 U.S.—Rindge Co. v. Los Angeles County, 262 U.S. 700, 43 S. Ct. 689, 67 L. Ed. 1186 (1923); Hynoski v. Columbia County Redevelopment Authority, 941 F. Supp. 2d 547, 91 Fed. R. Evid. Serv. 204 (M.D. Pa. 2013).
Ariz.—Queen Creek Summit, LLC v. Davis, 219 Ariz. 576, 201 P.3d 537 (Ct. App. Div. 1 2008).
Minn.—State ex rel. Com'r of Transp. v. Kettleson, 801 N.W.2d 160 (Minn. 2011).
Miss.—Dedeaux Utility Co., Inc. v. City of Gulfport, 63 So. 3d 514 (Miss. 2011).
N.Y.—Sicoli v. Town of Lewiston, 112 A.D.3d 1342, 977 N.Y.S.2d 835 (4th Dep't 2013).
Tex.—City of New Braunfels v. Carowest Land, Ltd., 432 S.W.3d 501 (Tex. App. Austin 2014).

7 U.S.—Clear Sky Car Wash, LLC v. City of Chesapeake, Va., 910 F. Supp. 2d 861 (E.D. Va. 2012), judgment aff'd, 743 F.3d 438 (4th Cir. 2014).
N.Y.—Hargrove v. New York City School Const. Authority, 95 A.D.3d 1116, 944 N.Y.S.2d 315, 279 Ed. Law Rep. 1094 (2d Dep't 2012).
Tex.—Texas Border Coalition v. Napolitano, 614 F. Supp. 2d 54 (D.D.C. 2009).

8 U.S.—Kelo v. City of New London, Conn., 545 U.S. 469, 125 S. Ct. 2655, 162 L. Ed. 2d 439, 10 A.L.R. Fed. 2d 733 (2005).

9 Wis.—Kamrowski v. State, 31 Wis. 2d 256, 142 N.W.2d 793 (1966).
Flood control
The condemnation of land for the purpose of maintaining a flood plain did not violate the owner's equal protection rights, even though other properties located in the same flood plain were not condemned, where the other property owners, but not the condemnee, agreed to not develop their property.
Iowa—ACCO Unlimited Corp. v. City of Johnston, 611 N.W.2d 506 (Iowa 2000).

10 N.H.—Gazzola v. Clements, 120 N.H. 25, 411 A.2d 147 (1980).

11 U.S.—Bowers v. Whitman, 671 F.3d 905 (9th Cir. 2012).

Consideration of general benefits

N.C.—Department of Transp. v. Rowe, 353 N.C. 671, 549 S.E.2d 203 (2001).

Cooperative or privately owned utility

Colo.—Poudre Valley Rural Elec. Ass'n, Inc. v. City of Loveland, 807 P.2d 547 (Colo. 1991).

Replacement cost of church property

Md.—Davis v. Montgomery County, 267 Md. 456, 298 A.2d 178 (1972).

Business damages

Fla.—Texaco, Inc. v. Department of Transp., 537 So. 2d 92 (Fla. 1989).

Litigation expenses; attorney's fees

Miss.—Jackson Redevelopment Authority v. King, Inc., 364 So. 2d 1104 (Miss. 1978).

Okla.—McAlester Urban Renewal Authority v. Cuzalina, 1973 OK 144, 520 P.2d 656 (Okla. 1973).

Different prejudgment and postjudgment interest rates

Ga.—Brooks v. Department of Transp., 254 Ga. 60, 327 S.E.2d 175 (1985).

12 **Interest**

A statutory provision fixing interest awarded in quick-take condemnations at 6% violates equal protection where the legal rate is otherwise 10.5%, and the State has not provided a rational reason justifying the difference.

Alaska—City of Valdez v. 18.99 Acres, More or Less, of Land Situated in City of Valdez, 686 P.2d 682 (Alaska 1984).

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PART VI. Privileges and Immunities; Equal Protection

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O. Property Rights

§ 1592. Landlord and tenant

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law 3213, 3504 to 3506, 3522

Under the rational basis test, the courts have upheld various government actions dealing with the landlord and tenant relationship, including rent control.

The rational basis test[1] applies to challenges to statutes and other governmental actions relating to the landlord and tenant relationship challenged on equal protection grounds.[2] Thus, various rent control ordinances have been held not to violate the Equal Protection Clause where they are found rationally related to a legitimate purpose of protecting tenants.[3]

A distinction in the rate of return allowed small and large landlords may have a rational relationship to a legitimate state interest in maintaining decent and affordable rental housing.[4] Since the right to use lawfully regulated property as one wishes is not fundamental, conditions placed on the removal of property from the rent controlled market only need to be rationally related to a legitimate state interest.[5]

Courts have also upheld, under the rational basis test, certain exemptions from housing standards for owner-occupied two-family buildings;[6] a protected tenancy period for elderly or disabled tenants in buildings being converted into condominiums;[7] registration of rental units and the assessment of inspection fees;[8] laws on the application of security deposits,[9] including a

provision for an award of attorney's fees to a tenant who proves that a landlord willfully retained a security deposit in violation of the law;[10] a welfare agency's policy of refusing to make direct rental payments to landlords;[11] and laws prohibiting landlords of residential property from retaliating against a tenant under certain circumstances.[12]

A statute providing a summary possessory remedy does not violate equal protection since a state has an interest in having unpaid rent disputes promptly adjudicated.[13] Requirements that tenants deposit rent in trust to remain in possession pending the disposition or appeal of a summary eviction proceeding have a rational basis.[14]

Courts have upheld legislation pertaining to the necessity and content of written leases for mobile home park tenancies[15] and eviction laws that distinguish between tenants of traditional housing and those in mobile home parks.[16] Allegations by owners of mobile home park that city treated them differently than other similarly situated park owners by denying their application to close the park stated equal protection claim against city.[17]

Equal protection is not violated by a statutory limitation of double damages for the wrongful eviction of residential tenants while commercial tenants retained the common-law remedy of punitive damages.[18]

CUMULATIVE SUPPLEMENT

Cases:

Ordinance requiring landlords to make certain disclosures to tenants and inform tenants of their rights with regard to buyout negotiations and agreements had rational basis, as required to not violate Equal Protection Clause; municipality reasonably could conclude that tenants were in inferior bargaining position relative to landlords, who generally were more sophisticated and had more information about rental market and rights and obligations of both parties than were tenants, and municipality also reasonably could conclude that landlords faced unique incentives to pressure tenants into accepting buyout agreements, such as avoidance of restrictions and regulations that applied to no-fault evictions. U.S. Const. Amend. 14. San Francisco Apartment Association v. City and County of San Francisco, 881 F.3d 1169 (9th Cir. 2018).

Under rational basis review, village ordinance which required tenants, when applying for utility services, to obtain a landlord's written guarantee that the landlord would pay any unpaid utility charges for the rented property did not violate equal protection; ensuring payment for utility services was a plausible policy reason for the classifications requiring landlords guarantees for tenants but not for residential owners, who were tied to real estate located in village and against whom collection could be more easily pursued, village considered the inherent increased likelihood of a tenant's lack of creditworthiness, costs associated with locating residential landowner were less than locating a previous tenant, and guarantees allowed village to collect from persons directly tied to property. U.S. Const. Amend. 14; Neb. Const. art. 1, § 3. REO Enterprises, LLC v. Village of Dorchester, 306 Neb. 683, 947 N.W.2d 480 (2020).

[END OF SUPPLEMENT]

Footnotes

1 § 1279.

2 U.S.—Brown v. City of Barre, Vt., 878 F. Supp. 2d 469 (D. Vt. 2012).
N.Y.—In re City of Rochester, 90 A.D.3d 1480, 935 N.Y.S.2d 748 (4th Dep't 2011).
R.I.—Mackie v. State, 936 A.2d 588 (R.I. 2007).

3 U.S.—Pennell v. City of San Jose, 485 U.S. 1, 108 S. Ct. 849, 99 L. Ed. 2d 1 (1988).
Md.—Tyler v. City of College Park, 415 Md. 475, 3 A.3d 421 (2010).
Mobile home rent control ordinances
U.S.—Guggenheim v. City of Goleta, 638 F.3d 1111 (9th Cir. 2010).
Cal.—Besaro Mobile Home Park, LLC v. City of Fremont, 204 Cal. App. 4th 345, 138 Cal. Rptr. 3d 774 (1st Dist. 2012).

4 Mass.—Steinbergh v. Rent Control Bd. of Cambridge, 410 Mass. 160, 571 N.E.2d 15 (1991).

5 Mass.—Fragopoulos v. Rent Control Bd. of Cambridge, 408 Mass. 302, 557 N.E.2d 1153 (1990).

6 N.J.—Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 416 A.2d 334, 20 A.L.R.4th 1219 (1980).

7 N.J.—Edgewater Inv. Associates v. Borough of Edgewater, 103 N.J. 227, 510 A.2d 1178 (1986).

8 Wash.—Margola Associates v. City of Seattle, 121 Wash. 2d 625, 854 P.2d 23 (1993).

9 Kan.—Clark v. Walker, 225 Kan. 359, 590 P.2d 1043 (1979).

10 Colo.—Torres v. Portillos, 638 P.2d 274 (Colo. 1981).

11 Conn.—Tucker v. Alleyne, 195 Conn. 399, 488 A.2d 452 (1985).

12 N.J.—Troy Hills Village, Inc. v. Fischler, 122 N.J. Super. 572, 301 A.2d 177 (Law Div. 1971), judgment aff'd, 122 N.J. Super. 525, 301 A.2d 153 (App. Div. 1973).
Or.—Marquam Inv. Corp. v. Beers, 47 Or. App. 711, 615 P.2d 1064 (1980).

13 Haw.—KNG Corp. v. Kim, 107 Haw. 73, 110 P.3d 397 (2005).

14 Haw.—KNG Corp. v. Kim, 107 Haw. 73, 110 P.3d 397 (2005).
Pa.—Smith v. Coyne, 555 Pa. 21, 722 A.2d 1022 (1999).

15 Ill.—People ex rel. Fahner v. Hedrich, 108 Ill. App. 3d 83, 63 Ill. Dec. 782, 438 N.E.2d 924 (2d Dist. 1982).

16 Mass.—Newell v. Rent Bd. of Peabody, 378 Mass. 443, 392 N.E.2d 837 (1979).

17 U.S.—Surf and Sand, LLC v. City of Capitola, 717 F. Supp. 2d 934 (N.D. Cal. 2010).

18 Okla.—Wagoner v. Bennett, 1991 OK 70, 814 P.2d 476 (Okla. 1991).

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